



City of Parma Heights Council Meeting

6281 Pearl Road

Monday, November 27, 2023

7 :00 PM

ROLL CALL

PLEDGE OF ALLEGIANCE

ACTION ON MINUTES:

- NOVEMBER 13, 2023 – CITY COUNCIL MEETING

REPORTS FROM MAYOR AND DIRECTORS

COMMUNICATIONS: NONE AT THIS TIME

PUBLIC SESSION

LEGISLATION

Third Reading

1. ORDINANCE NO. 2023 – 65

AN ORDINANCE AUTHORIZING AND DIRECTING THE ADMINISTRATION TO ENTER INTO A MASTER SERVICES AGREEMENT WITH FLOCK GROUP INC. FOR SAFETY CAMERA SERVICES, EXPEND FUNDS PURSUANT TO THAT AGREEMENT, AND DECLARING AN EMERGENCY, AS AMENDED

2. ORDINANCE NO. 2023 – 67

AN ORDINANCE AMENDING CHAPTER 194 ENTITLED “EARNED INCOME TAX REGULATIONS EFFECTIVE BEGINNING JANUARY 1, 2016” OF THE PARMA HEIGHTS CODIFIED ORDINANCES, AND DECLARING AN EMERGENCY

Second Reading

3. ORDINANCE NO. 2023 – 75

AN ORDINANCE TO ESTABLISH APPROPRIATIONS FOR THE CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF PARMA HEIGHTS, OHIO DURING THE PERIOD OF JANUARY 1, 2024 TO AND INCLUDING DECEMBER 31, 2024, AND DECLARING AN EMERGENCY, AS AMENDED

4. ORDINANCE NO. 2023 - 81

AN ORDINANCE AUTHORIZING THE ADMINISTRATION TO ENTER INTO A CONTRACT WITH RICHARD L. BOWEN + ASSOCIATES, INC. TO SERVE AS CITY ENGINEER, AND PROVIDING FOR PAYMENT FOR SERVICES RENDERED THEREUNDER, AND DECLARING AN EMERGENCY

First Reading

5. RESOLUTION NO. 2023 – 83

A RESOLUTION AUTHORIZING THE ADMINISTRATION TO ENTER INTO AN AGREEMENT FOR THE MANAGEMENT OF THE CASSIDY THEATRE WITH CASSIDY THEATRE, INC. AN OHIO NOT FOR PROFIT CORPORATION, AND DECLARING AN EMERGENCY

6. ORDINANCE NO. 2023 – 84

AN ORDINANCE ESTABLISHING A SCHOOL ZONE ON YORK ROAD AT VALLEY FORGE HIGH SCHOOL, AND DECLARING AN EMERGENCY

7. RESOLUTION NO. 2023 – 85

A RESOLUTION AUTHORIZING THE ADMINISTRATION TO ENTER INTO AN AGREEMENT WITH THE CITY OF NORTH ROYALTON TO PROVIDE FOR PRISONER HOUSING SERVICES, AND DECLARING AN EMERGENCY

ADJOURNMENT

ORDINANCE NO. 2023 – 65

AN ORDINANCE AUTHORIZING AND DIRECTING THE ADMINISTRATION TO ENTER INTO A MASTER SERVICES AGREEMENT WITH FLOCK GROUP INC. FOR SAFETY CAMERA SERVICES, EXPEND FUNDS PURSUANT TO THAT AGREEMENT, AND DECLARING AN EMERGENCY, AS AMENDED

WHEREAS, Flock Safety cameras provide law enforcement agencies with the tools needed to increase the effectiveness of public safety efforts, target crime efficiently and objectively, and help provide the information police need to stop crime; and

WHEREAS, Flock Group Inc. offers a software and hardware solution for image detection and recording; and

WHEREAS, the City is desirous of accessing the Flock Group Inc.’s safety camera services in order to create, view, search, and archive footage and receive notifications, including those from non-agency users of the Flock service, (where there is an investigative or bona fide lawful purpose), such as schools, neighborhood homeowners associations, businesses, and individual users.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1: The Administration is authorized and directed to enter into a Master Services Agreement between the City of Parma Heights and Flock Group Inc. for safety camera services in the form as identified as Ordinance Exhibit “A” attached hereto, and made a part hereof as though fully rewritten, and to expend funds for those professional services.

Section 2: This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3: This Ordinance is declared to be an emergency measure necessary for the public peace, health, and safety of the Municipality, and for the further reason it is necessary for the City to secure current pricing and to avoid any disruption of public safety; wherefore, this Ordinance shall be in full force and effect immediately upon its passage by Council and approval by the Mayor.

PASSED: _____
PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL APPROVED

FILED WITH
THE MAYOR: _____
MAYOR MARIE GALLO

ORD. EXHIBIT A,
as amended

Flock Safety + OH - Parma Heights PD

Flock Group Inc.
1170 Howell Mill Rd, Suite 210
Atlanta, GA 30318

MAIN CONTACT:
Myron Maret
myron.maret@flocksafety.com
(404) 631-6599

Company Overview

At Flock Safety, technology unites law enforcement and the communities they serve to eliminate crime and shape a safer future, together. We created the first public safety operating system to enable neighborhoods, schools, businesses, and law enforcement to work together to collect visual, audio, and situational evidence across an entire city to solve and prevent crime.

Our connected platform, comprised of License Plate Recognition (LPR), live video, audio detection, and a suite of integrations (AVL, CAD & more), alerts law enforcement when an incident occurs and turns unbiased data into objective answers that increase case clearance, maximize resources, and reduce crime -- all without compromising transparency or human privacy.

Join thousands of agencies reducing crime with Flock Safety's public safety operating system

2000+	120	1B+	<60%*
communities with private-public partnerships	incident alerts / minute	1B+ vehicles detected / month	<60% local crime reduction in Flock cities

*According to a 2019 study conducted by Cobb County Police Department

Introduction

Layer Intelligence to Solve More Crime

The pathway to a safer future looks different for every community. As such, this proposal presents a combination of products that specifically addresses your public safety needs, geographical layout, sworn officer count, and budget. These components make up your custom public safety operating system, a connected device network and software platform designed to transform real-time data into a panoramic view of your jurisdiction and help you zero in on the leads that solve more cases, prevent future crimes, and foster trust in the communities you serve.

Software Platform

Flock Safety's out-of-box software platform collects and makes sense of visual, audio, and situational evidence across your entire network of devices.

Out-of-Box Software Features

Simplified Search

Get a complete view of all activity tied to one vehicle in your network of privately and publicly owned cameras. The user-friendly search experience allows officers to filter hours of footage in seconds based on time, location, and detailed vehicle criteria using patented Vehicle Fingerprint™ technology. Search filters include:

- Vehicle make
- Body type
- Color
- License plates
 - Partial tags
 - Missing tags
 - Temporary tags
 - State recognition
- Decals
- Bumper stickers
- Back racks
- Top racks

National and Local Sharing

Access 1B+ additional plate reads each month without purchasing more cameras. Solve cross-jurisdiction crimes by opting into Flock Safety's sharing networks, including one-to-one, national, and statewide search networks. Users can also receive alerts from several external LPR databases:

California SVS
FDLE
FL Expired Licenses
FL Expired Tags
FL Sanctioned Drivers
FL Sex Offenders
Georgia DOR
IL SOS
Illinois Leads
NCIC
NCMEC Amber Alert
REJIS
CCIC
FBI

Real-time Alerts

Receive SMS, email, and in-app notifications for custom Hot Lists, NCIC wanted lists, AMBER alerts, Silver alerts, Vehicle Fingerprint matches, and more.

Interactive ESRI Map

View your AVL, CAD, traffic, and LPR alerts alongside live on-scene video from a single interactive map for a birdseye view of activity in your jurisdiction.

Vehicle Location Analysis

Visualize sequential Hot List alerts and the direction of travel to guide officers to find suspect vehicles faster.

Out-of-Box Software Features (Continued)

Transparency Portal	Establish community trust with a public-facing dashboard that shares policies, usage, and public safety outcomes related to your policing technology.
Insights Dashboard	Access at-a-glance reporting to easily prove ROI, discover crime and traffic patterns and prioritize changes to your public safety strategy by using data to determine the most significant impact.
Native MDT Application	Download FlockOS to your MDTs to ensure officers never miss a Hot List alert while out on patrol.
Hot List Attachments	Attach relevant information to Custom Hot List alerts. Give simple, digestible context to Dispatchers and Patrol Officers responding to Hot List alerts so they can act confidently and drive better outcomes. When you create a custom Hot List Alert, add case notes, photos, reports, and other relevant case information.
Single Sign On (SSO)	Increase your login speed and information security with Okta or Azure Single Sign On (SSO). Quickly access critical information you need to do your job by eliminating the need for password resets and steps in the log-in process.

License Plate Recognition

The Flock Safety Falcon® LPR camera uses Vehicle Fingerprint™ technology to transform hours of footage into actionable evidence, even when a license plate isn't visible, and sends Hot List alerts to law enforcement users when a suspect vehicle is detected. The Falcon has fixed and location-flexible deployment options with 30% more accurate reads than leading LPR.*

*Results from the 2019 side-by-side comparison test conducted by LA County Sheriff's Department

Flock Safety Falcon® LPR Camera	Flock Safety Falcon® Flex	Flock Safety Falcon® LR
<p>Fixed, infrastructure-free LPR camera designed for permanent placement.</p> <ul style="list-style-type: none"> √ 1 Standard LPR Camera √ Unlimited LTE data service + Flock OS platform licenses √ 1 DOT breakaway pole √ Dual solar panels √ Permitting, installation, and ongoing maintenance 	<p>Location-flexible LPR camera designed for fast, easy self-installation, which is ideal for your ever-changing investigative needs.</p> <ul style="list-style-type: none"> √ 1 LPR Camera √ Unlimited LTE data service + software licenses √ 1 portable mount with varying-sized band clamps √ 1 Charger for internal battery √ 1 hardshell carrying case 	<p>Long-range, high-speed LPR camera that captures license plates and Vehicle Fingerprint data for increasing investigative leads on high-volume roadways like highways and interstates.</p> <ul style="list-style-type: none"> √ 1 Long-Range LPR Camera √ Computing device in protective poly case √ AC Power √ Permitting, installation, and ongoing maintenance

Your Flock Safety Team

Flock Safety is more than a technology vendor; we are a partner in your mission to build a safer future. We work with thousands of law enforcement agencies across the US to build stronger, safer communities that celebrate the hard work of those who serve and protect. We don't disappear after contracts are signed; we pride ourselves on becoming an extension of your hard-working team as part of our subscription service.

Implementation	Meet with a Solutions Consultant (former LEO) to build a deployment plan based on your needs. Our Permitting Team and Installation Technicians will work to get your device network approved, installed, and activated.
User Training + Support	Your designated Customer Success Manager will help train your power users and ensure you maximize the platform, while our customer support team will assist with needs as they arise.
Maintenance	We proactively monitor the health of your device network. If we detect that a device is offline, a full-time technician will service your device for no extra charge. <i>Note: Ongoing maintenance does not apply to Falcon Flex devices.</i>
Public Relations	Government Affairs Get support educating your stakeholders, including city councils and other governing bodies. Media Relations Share crimes solved in the local media with the help of our Public Relations team.

flock safety

EXHIBIT A ORDER FORM

Customer: OH - Parma Heights PD	Initial Term: 60 Months
Legal Entity Name: OH - Parma Heights PD	Renewal Term: 24 Months
Accounts Payable Email: sscharschmidt@phpd.us	Payment Terms: Net 30
Address: 6184 Pearl Rd Parma Heights, Ohio 44130	Billing Frequency: Annual Plan - First Year Invoiced at Signing.
	Retention Period: 30 Days

Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$25,000.00 <u>\$32,500.00</u>
Flock Safety Flock OS			
FlockOS™	Included	1	Included
Flock Safety LPR Products			
Flock Safety Falcon®	Included	10 <u>13</u>	Included

Professional Services and One Time Purchases

Item	Cost	Quantity	Total
One Time Fees			
<u>Flock Safety Professional Services</u>			
Professional Services - Standard Implementation Fee	\$650.00	<u>3</u>	<u>\$1,950.00</u>

Subtotal Year 1: ~~\$25,000.00~~ \$34,450.00

Annual Recurring Subtotal: ~~\$25,000.00~~ \$32,500.00

Discounts: ~~\$25,000.00~~ \$32,500.00

Estimated Tax: \$0.00

Contract Total: ~~\$125,000.00~~ \$164,450.00

*Taxes shown above are provided as an estimate. Actual taxes are the responsibility of the Customer. This Agreement may be renewed for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a **Renewal Term**”).*

Billing Schedule

Billing Schedule	Amount (USD)
Year 1	
At Contract Signing	\$25,000.00 <u>\$34,450.00</u>
Annual Recurring after Year 1	\$25,000.00 <u>\$32,500.00</u>
Contract Total	\$125,000.00 <u>\$164,450.00</u>

*Tax not included

Discounts

Discounts Applied	Amount (USD)
Flock Safety Platform	\$25,000.00 <u>\$32,500.00</u>
Flock Safety Add-ons	\$0.00
Flock Safety Professional Services	\$0.00

Product and Services Description

Flock Safety Platform Items	Product Description	Terms
Flock Safety Falcon ®	An infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint® technology to capture vehicular attributes.	The Term shall commence upon first installation and validation of Hardware.

One-Time Fees	Service Description
Installation on existing infrastructure	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.
Professional Services - Standard Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.
Professional Services - Advanced Implementation Fee	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.

FlockOS Features & Description

Package: Essentials

FlockOS Features	Description
Community Cameras (Full Access)	Access to all privately owned Flock devices within your jurisdiction that have been shared with you.
Unlimited Users	Unlimited users for FlockOS
State Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the statewide Flock network.
Nationwide Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the nationwide Flock network.
Direct Share - Surrounding Jurisdiction (Full Access)	Access to all Flock devices owned by law enforcement that have been directly shared with you. Has the ability to search by vehicle fingerprint, receive hot list alerts, and view devices on the map.
Time & Location Based Search	Search full, partial, and temporary plates by time at particular device locations
License Plate Lookup	Look up specific license plate location history captured on Flock devices
Vehicle Fingerprint Search	Search footage using Vehicle Fingerprint™ technology. Access vehicle type, make, color, license plate, state, missing / covered plates, and other unique features like bumper stickers, decals, and roof rack.
Flock Insights/Analytics page	Reporting tool to help administrators manage their LPR program with device performance data, user activity, network audits, plate read reports, hot list alert reports, event logs, and outcome reports.
ESRI Based Map Interface	Flock Safety's maps are powered by ESRI, which offers the ability for 3D visualization, viewing of floor plans, and layering of external GIS data, such as City infrastructure (i.e., public facilities, transit systems, utilities), Boundary mapping (i.e., precincts, county lines, beat maps), and Interior floor plans (i.e., schools, hospitals, corporate campuses, universities)
Real-Time NCIC Alerts on Flock ALPR Cameras	Alert sent when a vehicle entered into the NCIC crime database passes by a Flock camera
Unlimited Custom Hot Lists	Ability to add a suspect's license plate to a custom list and get alerted when it passes by a Flock camera

By executing this Order Form, Customer represents and warrants that it has read and agrees to all of the terms and conditions contained in the Master Services Agreement attached. The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

Customer: OH - Parma Heights PD

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

PO Number: _____

Master Services Agreement

This Master Services Agreement (this “*Agreement*”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Road NW Suite 210, Atlanta, GA 30318 (“*Flock*”) and the entity identified in the signature block (“*Customer*”) (each a “*Party*,” and together, the “*Parties*”) on this the 18 day of October 2023. This Agreement is effective on the date of mutual execution (“*Effective Date*”). Parties will sign an Order Form (“*Order Form*”) which will describe the Flock Services to be performed and the period for performance, attached hereto as **Exhibit A**. The Parties agree as follows:

RECITALS

WHEREAS, Flock offers a software and hardware situational awareness solution through Flock’s technology platform that upon detection is capable of capturing audio, video, image, and recording data and provide notifications to Customer (“*Notifications*”);

WHEREAS, Customer desires access to the Flock Services (defined below) on existing devices, provided by Customer, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, via the Flock Services;

WHEREAS, Customer shall have access to the Footage in Flock Services. Pursuant to Flock’s standard Retention Period (defined below) Flock deletes all Footage on a rolling thirty (30) day basis, except as otherwise stated on the *Order Form*. Customer shall be responsible for extracting, downloading and archiving Footage from the Flock Services on its own storage devices; and

AGREEMENT

NOW, THEREFORE, Flock and Customer agree that this Agreement, and any Order Form, purchase orders, statements of work, product addenda, or the like, attached hereto as

exhibits and incorporated by reference, constitute the complete and exclusive statement of the Agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications and negotiations by and between the Parties.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “**Anonymized Data**” means Customer Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards which irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.

1.2 “**Authorized End User(s)**” means any individual employees, agents, or contractors of Customer accessing or using the Services, under the rights granted to Customer pursuant to this Agreement.

1.3 “**Customer Data**” means the data, media and content provided by Customer through the Services. For the avoidance of doubt, the Customer Data will include the Footage.

1.4. “**Customer Hardware**” means the third-party camera owned or provided by Customer and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.5 “**Embedded Software**” means the Flock proprietary software and/or firmware integrated with or installed on the Flock Hardware or Customer Hardware.

1.6 “**Flock Hardware**” means the Flock device(s), which may include the pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface, to provide the Flock Services as specifically set forth in the applicable product addenda.

1.7 “**Flock IP**” means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to Customer and/or its Authorized End Users. Flock IP does not include Footage (as defined below).

1.8 “**Flock Network End User(s)**” means any user of the Flock Services that Customer authorizes access to or receives data from, pursuant to the licenses granted herein.

1.9 “**Flock Services**” means the provision of Flock’s software and hardware situational awareness solution, via the Web Interface, for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.10 “**Footage**” means still images, video, audio and other data captured by the Flock Hardware or Customer Hardware in the course of and provided via the Flock Services.

1.11 “**Hotlist(s)**” means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e., NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.12 “**Installation Services**” means the services provided by Flock for installation of Flock Services.

1.13 “**Retention Period**” means the time period that the Customer Data is stored within the cloud storage, as specified in the product addenda.

1.14 “**Vehicle Fingerprint™**” means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

1.15 “**Web Interface**” means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services.

2. SERVICES AND SUPPORT

2.1 Provision of Access. Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the data retention time defined on the Order Form ("**Retention Period**"). Authorized End Users will be required to sign up for an account and select a password and username ("**User ID**"). Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, including any acts or omissions of authorized End user which would constitute a breach of this agreement if undertaken by customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this Agreement and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).

2.2 Embedded Software License. Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Flock Services, solely as necessary for Customer to use the Flock Services.

2.3 Support Services. Flock shall monitor the Flock Services, and any applicable device health, in order to improve performance and functionality. Flock will use commercially reasonable efforts to respond to requests for support within seventy-two (72) hours. Flock will provide Customer with reasonable technical and on-site support and maintenance services in-person, via phone or by email at support@flocksafety.com (such services collectively referred to as "**Support Services**").

2.4 Upgrades to Platform. Flock may make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Flock's products or services to its agencies, the competitive strength of, or market for, Flock's products or services, such platform or system's cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this Agreement.

2.5 Service Interruption. Services may be interrupted in the event that: (a) Flock's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Flock reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance ("**Service Interruption**"). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Customer, to provide updates, and to resume providing access to Flock Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Customer's direct actions or by the actions of parties associated with the Customer, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, Customer will receive a credit for five (5) free days at the end of the Term.

2.6 Service Suspension. Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP or Flock Service if (a) there is a threat or attack on any of the Flock IP by Customer; (b) Customer's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Customer has violated any term of this provision, including, but not limited to, utilizing Flock Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Customer's account ("**Service Suspension**"). Customer shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by Customer, the Term will be tolled by the duration of the Service Suspension.

2.7 Hazardous Conditions. Flock Services do not contemplate hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately.

3. CUSTOMER OBLIGATIONS

3.1 Customer Obligations. Flock will assist Customer Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Flock with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID, a name that they do not have the right to use, or any other name with the intent of impersonation. Customer and Authorized End Users may not transfer their account to anyone else without prior written permission of Flock. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this Agreement, Customer shall not designate Authorized End Users for persons who are not officers, employees, or agents of Customer. Authorized End Users shall only use Customer-issued email addresses for the creation of their User ID. Customer is responsible for any Authorized End User activity associated with its account. Customer shall ensure that Customer provides Flock with up to date contact information at all times during the Term of this agreement. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Flock Services. Customer shall (at its own expense) provide Flock with reasonable access and use of Customer facilities and Customer personnel in order to enable Flock to perform Services (such obligations of Customer are collectively defined as *Customer Obligations*”).

3.2 Customer Representations and Warranties. Customer represents, covenants, and warrants that Customer shall use Flock Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

4. DATA USE AND LICENSING

4.1 Customer Data. As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the Customer Data and perform all acts as may be necessary for Flock to provide the Flock Services to Customer. Flock does not own and shall not sell Customer Data.

4.2 Customer Generated Data. Flock may provide Customer with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available, messages,

text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Customer (“**Customer Generated Data**”). Customer shall retain whatever legally cognizable right, title, and interest in Customer Generated Data. Customer understands and acknowledges that Flock has no obligation to monitor or enforce Customer’s intellectual property rights of Customer Generated Data. Customer grants Flock a non-exclusive, irrevocable, worldwide, royalty-free, license to use the Customer Generated Data for the purpose of providing Flock Services. Flock does not own and shall not sell Customer Generated Data.

4.3 Anonymized Data. Flock shall have the right to collect, analyze, and anonymize Customer Data and Customer Generated Data to the extent such anonymization renders the data non-identifiable to create Anonymized Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right to use and distribute such Anonymized Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, and other Flock offerings. Parties understand that the aforementioned license is required for continuity of Services. Flock does not own and shall not sell Anonymized Data.

5. CONFIDENTIALITY; DISCLOSURES

5.1 Confidentiality. To the extent required by any applicable public records requests, each Party (the “**Receiving Party**”) understands that the other Party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via Flock Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own proprietary information, but in no event less than commercially reasonable precautions, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any

such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. At the termination of this Agreement, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of the Agreement. Notwithstanding any termination, all confidentiality obligations of Proprietary Information that is trade secret shall continue in perpetuity or until such information is no longer trade secret.

5.2 Usage Restrictions on Flock IP. Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. Customer and Authorized End Users shall not: (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Flock Services or Flock IP; (vi) use the Flock Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Customer's rights. There are no implied rights.

5.3 Disclosure of Footage. Subject to and during the Retention Period, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal process, enforce this Agreement, or detect, prevent or otherwise address security, privacy, fraud or technical issues, or emergency situations.

6. PAYMENT OF FEES

6.1 Billing and Payment of Fees. Customer shall pay the fees set forth in the applicable Order Form based on the billing structure and payment terms as indicated in the Order Form. If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. Customer acknowledges and agrees that a failure to contact Flock within this period will serve as a waiver of any claim. If any undisputed fee is more than thirty (30) days overdue, Flock may, without limiting its other rights and remedies, suspend delivery of its service until such undisputed invoice is paid in full. Flock shall provide at least thirty (30) days 'prior written notice to Customer of the payment delinquency before exercising any suspension right.

6.2 Notice of Changes to Fees. Flock reserves the right to change the fees for subsequent Renewal Terms by providing sixty (60) days 'notice (which may be sent by email) prior to the end of the Initial Term or Renewal Term (as applicable).

~~**6.3 Late Fees.** If payment is not issued to Flock by the due date of the invoice, an interest penalty of 1.0% of any unpaid amount may be added for each month or fraction thereafter, until final payment is made.~~

~~**6.4 Taxes.** Customer is responsible for all taxes, levies, or duties, excluding only taxes based on Flock's net income, imposed by taxing authorities associated with the order. If Flock has the legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which Customer is responsible, the appropriate amount shall be invoice to and paid by Customer unless Customer provides Flock a legally sufficient tax exemption certificate and Flock shall not charge customer any taxes from which it is exempt. If any deduction or withholding is~~

~~required by law, Customer shall notify Flock and shall pay Flock any additional amounts necessary to ensure that the net amount that Flock receives, after any deduction and withholding, equals the amount Flock would have received if no deduction or withholding had been required.~~

7. TERM AND TERMINATION

7.1 **Term.** The initial term of this Agreement shall be for the period of time set forth on the Order Form (the "**Term**"). Following the Term, unless otherwise indicated on the Order Form, this Agreement ~~will automatically~~ may be renewed for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "**Renewal Term**") ~~unless either Party gives the other Party notice of non-renewal upon~~ written notice by Customer to Flock at least thirty (30) days prior to the end of the then-current term.

7.2 **Termination.** Upon termination or expiration of this Agreement, Flock will remove any applicable Flock Hardware at a commercially reasonable time period. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period ("**Cure Period**"). Either Party may terminate this Agreement (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. In the event of a material breach by Flock, and Flock is unable to cure within the **Cure Period**, Flock will refund Customer a pro-rata portion of the pre-paid fees for Services not received due to such termination.

7.3 **Survival.** The following Sections will survive termination: 1, 3, 5, 6, 7, 8.3, 8.4, 9, 11.1 and 11.6.

8. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

8.1 **Manufacturer Defect.** Upon a malfunction or failure of Flock Hardware or Embedded Software (a “*Defect*”), Customer must notify Flock’s technical support team. In the event of a Defect, Flock shall make a commercially reasonable attempt to repair or replace the defective Flock Hardware at no additional cost to the Customer. Flock reserves the right, in its sole discretion, to repair or replace such Defect, provided that Flock shall conduct inspection or testing within a commercially reasonable time, but no longer than seven (7) business days after Customer gives notice to Flock.

8.2 **Replacements.** In the event that Flock Hardware is lost, stolen, or damaged, Customer may request a replacement of Flock Hardware at a fee according to the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>). In the event that Customer chooses not to replace lost, damaged, or stolen Flock Hardware, Customer understands and agrees that (1) Flock Services will be materially affected, and (2) that Flock shall have no liability to Customer regarding such affected Flock Services, nor shall Customer receive a refund for the lost, damaged, or stolen Flock Hardware.

8.3 **Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock’s reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

8.4 **Disclaimer.** THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS CUSTOMER’S SOLE REMEDY, AND FLOCK’S SOLE LIABILITY, WITH RESPECT TO DEFECTS. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED “AS IS” AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 11.6.

8.5 **Insurance.** Flock will maintain commercial general liability policies as stated in Exhibit B.

8.6 **Force Majeure.** Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

9. LIMITATION OF LIABILITY; INDEMNITY

9.1 **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR LOSS OF REVENUE, BUSINESS OR BUSINESS INTERRUPTION; (B) INCOMPLETE, CORRUPT, OR INACCURATE DATA; (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (D) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (E) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF

LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 10.6.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

9.2 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable for the torts of its own officers, agents, or employees.

9.3 Flock Indemnity. Flock shall indemnify and hold harmless Customer, its agents and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of: (i) any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement; or (ii) any damage or injury to property or person directly caused by Flock's installation of Flock Hardware, except for where such damage or injury was caused solely by the negligence of the Customer or its agents, officers or employees. Flock's performance of this indemnity obligation shall not exceed the fees paid and/or payable for the services rendered under this Agreement in the preceding twelve (12) months.

10. INSTALLATION SERVICES AND OBLIGATIONS

10.1 Ownership of Hardware. Flock Hardware is owned and shall remain the exclusive property of Flock. Title to any Flock Hardware shall not pass to Customer upon execution of this Agreement, except as otherwise specifically set forth in this Agreement. Except as otherwise expressly stated in this Agreement, Customer is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Customer agrees and understands that in the event Customer is found to engage in any of the foregoing restricted actions, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination for material breach by Customer. Customer shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Customer default on any payment of the Flock Services, Flock may remove Flock Hardware at

Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

10.2 Deployment Plan. Flock shall advise Customer on the location and positioning of the Flock Hardware for optimal product functionality, as conditions and locations allow. Flock will collaborate with Customer to design the strategic geographic mapping of the location(s) and implementation of Flock Hardware to create a deployment plan ("***Deployment Plan***"). In the event that Flock determines that Flock Hardware will not achieve optimal functionality at a designated location, Flock shall have final discretion to veto a specific location, and will provide alternative options to Customer.

10.3 Changes to Deployment Plan. After installation of Flock Hardware, any subsequent requested changes to the Deployment Plan, including, but not limited to, relocating, re-positioning, adjusting of the mounting, removing foliage, replacement, changes to heights of poles will incur a fee according to the reinstall fee schedule located at (<https://www.flocksafety.com/reinstall-fee-schedule>). Customer will receive prior notice and confirm approval of any such fees.

10.4 Customer Installation Obligations. Customer is responsible for any applicable supplementary cost as described in the Customer Implementation Guide, attached hereto as Exhibit C ("***Customer Obligations***"). Customer represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the designated locations and to make any necessary inspections or maintenance in connection with such installation.

10.5 Flock's Obligations. Installation of any Flock Hardware shall be installed in a professional manner within a commercially reasonable time from the Effective Date of this Agreement. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Flock will continue to monitor the performance of Flock Hardware for the length of the Term. Flock may use a subcontractor or third party to perform certain obligations under this agreement, provided that Flock's use of such subcontractor or third party shall not release Flock from any duty or liability to fulfill Flock's obligations under this Agreement.

11. MISCELLANEOUS

11.1 Compliance With Laws. Parties shall comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s).

11.2 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

11.3 Assignment. This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

11.4 Entire Agreement. This Agreement, together with the Order Form(s), the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>), and any attached exhibits are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Customer's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon future purchase order is subject to these legal terms and does not alter the rights and obligations under this Agreement, except that future purchase orders may outline additional products, services, quantities and billing terms to be mutually accepted by Parties. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail. Customer agrees that Customer's purchase is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Flock with respect to future functionality or feature.

11.5 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Flock shall at all times be and act as an independent contractor to Customer.

11.6 Governing Law; Venue. This Agreement shall be governed by the laws of the state in which the Customer is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Customer is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

11.7 Special Terms. Flock may offer certain special terms which are indicated in the proposal and will become part of this Agreement, upon Customer's prior written consent and the mutual execution by authorized representatives ("*Special Terms*"). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

11.8 Publicity. Flock has the right to reference and use Customer's name and trademarks and disclose the nature of the Services in business and development and marketing efforts.

11.9 Feedback. If Customer or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency or Authorized End User hereby assigns to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

11.10 Export. Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11.11 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

11.12 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

11.13 **Conflict.** In the event there is a conflict between this Agreement and any applicable statement of work, or Customer purchase order, this Agreement controls unless explicitly stated otherwise.

11.14 **Morality.** In the event Customer or its agents become the subject of an indictment, contempt, scandal, crime of moral turpitude or similar event that would negatively impact or tarnish Flock's reputation, Flock shall have the option to terminate this Agreement upon prior written notice to Customer.

11.15 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt to the address listed on the Order Form (or, if different, below), if sent by certified or registered mail, return receipt requested.

11.16 **Non-Appropriation.** Notwithstanding any other provision of this Agreement, all obligations of the Customer under this Agreement which require the expenditure of funds are conditioned on the availability of funds appropriated for that purpose. Customer shall have the right to terminate this Agreement for non appropriation with thirty (30) days written notice without penalty or other cost.

FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210

ATLANTA, GA 30318

ATTN: LEGAL DEPARTMENT

EMAIL: legal@flocksafety.com

Customer NOTICES ADDRESS:

ADDRESS:

ATTN:

EMAIL:

EXHIBIT B
INSURANCE

Required Coverage. Flock shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services under this Agreement and the results of that work by Flock or its agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A. M. Best rating of no less than “A” and “VII”. Flock shall obtain and, during the term of this Agreement, shall maintain policies of professional liability (errors and omissions), automobile liability, and general liability insurance for insurable amounts of not less than the limits listed herein. The insurance policies shall provide that the policies shall remain in full force during the life of the Agreement. Flock shall procure and shall maintain during the life of this Agreement Worker's Compensation insurance as required by applicable State law for all Flock employees.

Types and Amounts Required. Flock shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

- (i) **Commercial General Liability** insurance written on an occurrence basis with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and product and completed operations coverage;
- (ii) **Umbrella or Excess Liability** insurance written on an occurrence basis with minimum limits of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate;
- (iii) **Professional Liability/Errors and Omissions** insurance with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate;
- (iv) **Commercial Automobile Liability** insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, death, and property coverage, including owned and non-owned and hired automobile coverage; and

(v) **Cyber Liability** insurance written on an occurrence basis with minimum limits of Five Million Dollars (\$5,000,000).

ORDINANCE NO. 2023 - 67

AN ORDINANCE AMENDING CHAPTER 194 ENTITLED “EARNED INCOME TAX REGULATIONS EFFECTIVE BEGINNING JANUARY 1, 2016” OF THE PARMA HEIGHTS CODIFIED ORDINANCES, AND DECLARING AN EMERGENCY

WHEREAS, Chapter 194 of the Parma Heights Codified Ordinances must be amended to reflect changes made under House Bill 33, signed into law earlier this year; and

WHEREAS, this Council desires to adopt the required amendments to Chapter 194.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga, and State of Ohio:

Section 1: That Chapter 194 of the Codified Ordinances as it previously existed is amended, and as amended, shall henceforth read as shown by edits set forth in Exhibit “A”, which is attached hereto and incorporated by reference.

Section 2: This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3: This Council declares this Ordinance to be an emergency measure for the immediate preservation of the public health, peace, and safety of the Municipality, and for the further reason that it is necessary to comply with House Bill 33 before December 31, 2023; wherefore, it shall be in full force and effect immediately after its passage by Council and approval of the Mayor.

PASSED: _____
PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL APPROVED

FILED WITH
THE MAYOR: _____
MAYOR MARIE GALLO

EXHIBIT A

CHAPTER 194

Earned Income Tax Regulations Effective Beginning January 1, 2016

- 194.01 Authority to levy tax; purpose of tax.
- 194.02 Definitions.
- 194.03 Imposition of tax.
- 194.04 Collection at source.
- 194.05 Annual return; filing.
- 194.06 Credit for tax paid to other municipalities.
- 194.07 Estimated taxes.
- 194.08 Rounding of amounts.
- 194.09 Requests for refunds.
- 194.10 Second municipality imposing tax after time period allowed for refund.
- 194.11 Amended returns.
- 194.12 Limitations.
- 194.13 Audits.
- 194.14 Service of assessment.
- 194.15 Administration of claims.
- 194.16 Tax information confidential.
- 194.17 Fraud.
- 194.18 Interest and penalties.
- 194.19 Authority of Tax Administrator and Finance Director; verification of information.
- 194.20 Request for opinion of the Tax Administrator.
- 194.21 Board of Tax Appeals.
- 194.22 Authority to create rules and regulations.
- 194.23 Rental and leased property.
- 194.24 Savings clause.
- 194.25 Collection of tax after termination of chapter.

194.27 Election to be subject to R.C. 718.80 TO 718.95

194.99 Violations; penalties.

194.01 AUTHORITY TO LEVY TAX; PURPOSE OF TAX.

(a) To provide funds for the purposes of, but not limited to, general Municipal operations, maintenance, new equipment, extension and enlargement of Municipal services and facilities and capital improvements, administration of Parma Heights, maintaining adequate personnel in the Police and Fire Departments and the emergency 911 program, Parma Heights hereby levies an annual Municipal income tax on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided.

(b) The annual tax is levied at a rate of three percent. The tax is levied at a uniform rate on all persons residing in or earning or receiving income in Parma Heights. The tax is levied on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided in Section 194.03 and other sections as they may apply.

(c) The tax on income and the withholding tax established by this chapter are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax is levied in accordance with, and is intended to be consistent with, the provisions and limitations of Ohio R.C. Chapter 718. This chapter is effective for tax years beginning on and after January 1, 2016. Municipal taxable years beginning on or before December 31, 2015, are subject to the income tax ordinance and amendments thereto, and rules and regulations and amendments thereto, as they existed before January 1, 2016.

(Ord. 2015-52. Passed 12-14-15.)

194.02 DEFINITIONS.

(a) Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to Federal income taxation or in Ohio R.C. Title LVII, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to Federal income tax and in Ohio R.C. Title LVII and the use is not consistent, then the use of the term in the laws of the United States relating to Federal income tax shall control over the use of the term in Ohio R.C. Title LVII.

(b) The singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

(c) As used in this chapter:

(1) "Adjusted Federal taxable income," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division (c)(24)D. of

this section, means a C corporation's Federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

A. Deduct intangible income to the extent included in Federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

B. Add an amount equal to five percent of intangible income deducted under division (c)(1)A. of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

C. Add any losses allowed as a deduction in the computation of Federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

D. 1. Except as provided in division (c)(1)D.2. of this section, deduct income and gain included in Federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

2. Division (c)(1)D.1. of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

E. Add taxes on or measured by net income allowed as a deduction in the computation of Federal taxable income;

F. In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of Federal taxable income;

G. Deduct, to the extent not otherwise deducted or excluded in computing Federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under Ohio R.C. 4313.02;

H. 1. Except as limited by divisions (c)(1)H.2., 3., and 4. of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.

The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce Municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

2. No person shall use the deduction allowed by division (c)(1)H. of this section to offset qualifying wages.

3. a. For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty percent of the amount of the deduction otherwise allowed by division (c)(1)H.1. of this section.

b. For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by division (c)(1)H.1. of this section.

4. Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (c)(1)H. of this section.

5. Nothing in division (c)(1)H.3.a. of this section precludes a person from carrying forward, use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (c)(1)H.3.a. of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (c)(1)H.3.a. of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (c)(1)H.3.a. of this section shall apply to the amount carried forward.

I. Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's Federal taxable income unless an affiliated group of corporations includes that net profit in the group's Federal taxable income in accordance with Section 194.05(v)(3)B.

J. Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's Federal taxable income unless an affiliated group of corporations includes that loss in the group's Federal taxable income in accordance with Section 194.05(v)(3)B.

If the taxpayer is not a C corporation, is not a disregarded entity that has made an election described in division (c)(48)B. of this section, is not a publicly traded partnership that has made the election described in division (c)(24)D. of this section, and is not an individual, the taxpayer shall compute adjusted Federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States Treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (c)(1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any

taxpayer to deduct any amount paid to or accrued for purposes of Federal self-employment tax.

(2) A. "Assessment" means a written finding by the Tax Administrator that a person has underpaid Municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the Board of Tax Appeals pursuant to Section 194.21, and has "ASSESSMENT" written in all capital letters at the top of such finding.

B. "Assessment" does not include a notice denying a request for refund issued under Section 194.09(c)(3), a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (c)(2)A. of this section.

(3) "Audit" means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a Municipal income tax.

(4) "Board of Tax Appeals" means the local board constituted to hear appeals of Municipal income tax matters, which is the entity created under Section 194.21.

(5) "Calendar quarter" means the three-month period ending on the last day of March, June, September, or December.

(6) "Casino operator" and "casino facility" have the same meanings as in Ohio R.C. 3772.01.

(7) "Certified mail," "express mail," "United States mail," "postal service," and similar terms include any delivery service authorized pursuant to Ohio R.C. 5703.056.

(8) "Disregarded entity" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for Federal income tax purposes.

(9) "Domicile" means the true, fixed, and permanent home of a taxpayer and to which, whenever absent, the taxpayer intends to return. A taxpayer may have more than one residence but not more than one domicile.

(10) "Employee" means an individual who is an employee for Federal income tax purposes.

(11) "Employer" means a person that is an employer for Federal income tax purposes.

(12) "Exempt income" means all of the following:

A. The military pay or allowances of members of the Armed Forces of the United States or members of their reserve components, including the national guard of any state.

B. Intangible income.

C. Social Security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, State, or Federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (c)(12)C. of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code.

D. The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

E. Compensation paid under Ohio R.C. 3501.28 or 3501.36 to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars (\$1,000) for the taxable year. Such compensation in excess of one thousand dollars (\$1,000) for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

F. Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations.

G. Alimony and child support received.

H. Compensation for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or compensation from punitive damages.

I. Income of a public utility when that public utility is subject to the tax levied under Ohio R.C. 5727.24 or 5727.30. Division (c)(12)I. of this section does not apply for purposes of Ohio R.C. Chapter 5745.

J. Gains from involuntary conversions, interest on Federal obligations, items of income subject to a tax levied by the State and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business.

K. Compensation or allowances excluded from Federal gross income under section 107 of the Internal Revenue Code.

L. Employee compensation that is not qualifying wages as defined in division (c)(35) of this section.

M. Compensation paid to a person employed within the boundaries of a United States Air Force base under the jurisdiction of the United States Air Force that is used for the housing of members of the United States Air Force and is a center for Air Force operations, unless the person is subject to taxation because of residence or domicile. If the

compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.

N. All or a portion of the income of individuals or a class of individuals under eighteen years of age.

O. 1. Except as provided in divisions (c)(12)O.2., 3., and 4. of this section, qualifying wages described in Section 194.04(c)(2) or (c)(5) to the extent the qualifying wages are not subject to withholding for Parma Heights under either of those divisions.

2. The exemption provided in division (c)(12)O.1. of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

3. The exemption provided in division (c)(12)O.1. of this section does not apply to qualifying wages that an employer elects to withhold under Section 194.04(c)(4)B.

4. The exemption provided in division (c)(12)O.1. of this section does not apply to qualifying wages if both of the following conditions apply:

a. For qualifying wages described in Section 194.04(c)(2), the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in Section 194.04(c)(5), the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;

b. The employee receives a refund of the tax described in division (c)(12)O.4.a. of this section on the basis of the employee not performing services in that municipal corporation.

P. 1. Except as provided in division (c)(12)P.2. or 3. of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in Parma Heights on not more than twenty days in a taxable year.

2. The exemption provided in division (c)(12)P.1. of this section does not apply under either of the following circumstances:

a. The individual's base of operation is located in the municipal corporation.

b. The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (c)(12)P.2.b. of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 194.04(c).

3. Compensation to which division (c)(12)P. of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.

4. For purposes of division (c)(12)P. of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

Q. Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to Ohio R.C. 709.023 on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, Municipal income tax shall be payable only to the municipal corporation of residence.

R. Income the taxation of which is prohibited by the constitution or laws of the United States.

Any item of income that is exempt income of a pass-through entity under division (c) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

(13) "Form 2106" means Internal Revenue Service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(14) "Generic form" means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated Municipal income taxes, or annual Municipal income tax liability or for filing a refund claim.

(15) "Gross receipts" means the total revenue derived from sales, work done, or service rendered.

(16) "Income" means the following:

A. 1. For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in division (c)(24)D. of this section.

2. For the purposes of division (c)(16)A.1. of this section:

a. Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass through entity until fully utilized, subject to division (c)(16)A.4. of this section;

b. The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.

3. Division (c)(16)A.2. of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (c)(12)N. or (c)(16)E. of this section.

4. Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.

B. In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

C. For taxpayers that are not individuals, net profit of the taxpayer.

D. Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for Federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings.

E. In accordance with a ballot issue, regarding S corporation language, approved by the voters in the election on November 2, 2004, a shareholder's share of net profits of an S corporation are taxable to Parma Heights to the extent such shares would be so allocated or apportioned to this State.

(17) "Intangible income" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Ohio R.C. Chapter 5701, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(18) "Internal Revenue Code" has the same meaning as in Ohio R.C. 5747.01.

(19) "Limited liability company" means a limited liability company formed under Ohio R.C. Chapter 1705 or under the laws of another state.

(20) "Municipal corporation" includes a joint economic development district or joint economic development zone that levies an income tax under Ohio R.C. 715.691, 715.70, 715.71, or 715.74.

(21) A. "Municipal taxable income" means the following:

1. For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or sitused to Parma Heights under Section 194.03, and further reduced by any pre-2017 net operating loss carryforward available to the person for Parma Heights.

2. a. For an individual who is a resident of Parma Heights, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (c)(21)B. of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation.

b. For an individual who is a nonresident of Parma Heights, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or sitused to the municipal corporation under Section 194.03, then reduced as provided in division (c)(21)B. of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for Parma Heights.

B. In computing the Municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (c)(21)A.2.a. or (c)(21)B. of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for Federal income tax purposes for the taxable year, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for Federal income tax purposes, but only to the extent the expenses do not relate to exempt income. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation and are not related to exempt income.

(22) "Municipality" means the same as the City of Parma Heights, herein referred to as "Parma Heights", and is the designation used most commonly in this chapter.

(23) "Net operating loss" means a loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.

(24) A. "Net profit" for a person other than an individual means adjusted Federal taxable income.

B. "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (c)(24)B. of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (c)(1)H. of this section.

C. For the purposes of this chapter, and notwithstanding division (c)(24)A. of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

D. A publicly traded partnership that is treated as a partnership for Federal income tax purposes, and that is subject to tax on its net profits by Parma Heights, may elect to be treated as a C corporation for Parma Heights. The election shall be made on the annual return for Parma Heights. Parma Heights will treat the publicly traded partnership as a C corporation if the election is so made.

(25) "Nonresident" means an individual that is not a resident.

(26) "Ohio Business Gateway" means the online computer network system, created under Ohio R.C. 125.30, that allows persons to electronically file business reply forms with State agencies and includes any successor electronic filing and payment system.

(27) "Other payer" means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the Federal gross income of the individual. "Other payer" includes casino operators and video lottery terminal sales agents.

(28) "Pass-through entity" means a partnership not treated as an association taxable as a C corporation for Federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for Federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for Federal income tax purposes. "Pass-through entity" does not include a trust, estate, grantor of a grantor trust, or disregarded entity.

(29) "Pension" means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.

(30) "Person" includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.

(31) "Postal service" means the United States postal service.

(32) "Postmark date," "date of postmark," and similar terms include the date recorded and marked in the manner described in division (B)(3) of Ohio R.C. 5703.056.

(33) A. "Pre-2017 net operating loss carryforward" means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the municipal corporation that was adopted by the municipal corporation before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such municipal corporation in future taxable years.

B. For the purpose of calculating Municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.

(34) "Publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.

(35) "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

A. Deduct the following amounts:

1. Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.

2. Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.

3. Any amount included in wages that is exempt income.

B. Add the following amounts:

1. Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.

2. Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option. Division (c)(35)B.2. of this section applies only to those amounts constituting ordinary income.

3. Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (c)(35)B.2. of this section applies only to employee contributions and employee deferrals.

4. Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.

5. Any amount received that is treated as self-employment income for Federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code.

6. Any amount not included in wages if all of the following apply:

a. For the taxable year the amount is employee compensation that is earned outside the United States and that either is included in the taxpayer's gross income for Federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code;

b. For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;

c. For no succeeding taxable year will the amount constitute wages; and

d. For any taxable year the amount has not otherwise been added to wages pursuant to either division (c)(35)B. of this section or Ohio R.C. 718.03, as that section existed before the effective date of H.B. 5 of the 130th General Assembly, March 23, 2015.

(36) "Related entity" means any of the following:

A. An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock;

B. A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock;

C. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (c)(36)D. of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation's outstanding stock;

D. The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (c)(36)A. to C. of this section have been met.

(37) "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "twenty percent (20%)" shall be substituted for "five percent (5%)" wherever "five percent (5%)" appears in section 1563(e) of the Internal Revenue Code.

(38) "Resident" means an individual who is domiciled in the municipal corporation as determined under Section 194.03(e).

(39) "S corporation" means a person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

(40) "Schedule C" means Internal Revenue Service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(41) "Schedule E" means Internal Revenue Service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(42) "Schedule F" means Internal Revenue Service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(43) "Single member limited liability company" means a limited liability company that has one direct member.

(44) "Small employer" means any employer that had total revenue of less than five hundred thousand dollars (\$500,000) during the preceding taxable year. For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; compensation; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for Federal income tax purposes or under generally accepted accounting principles. "Small employer" does not include the Federal government; any State government, including any State agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.

(45) "Tax Administrator" means the individual charged with direct responsibility for administration of an income tax levied by Parma Heights in accordance with this chapter.

(46) "Tax return preparer" means any individual described in section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.

(47) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(48) A. "Taxpayer" means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (c)(48)B.1. of this section, a disregarded entity.

B. 1. A single member limited liability company that is a disregarded entity for Federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:

a. The limited liability company's single member is also a limited liability company.

b. The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.

c. Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of Ohio R.C. 718.01 as that section existed on December 31, 2004.

d. The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.

e. The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.

2. For purposes of division (c)(48)B.1.e. of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least four hundred thousand dollars (\$400,000).

(49) "Taxpayers' rights and responsibilities" means the rights provided to taxpayers in Sections 194.09, 194.12, 194.13, 194.19(B), 194.20, 194.21, and Ohio R.C. 5717.011 and 5717.03, and the responsibilities of taxpayers to file, report, withhold, remit, and pay Municipal income tax and otherwise comply with Ohio R.C. Chapter 718 and resolutions, chapters, and rules and regulations adopted by Parma Heights for the imposition and administration of a Municipal income tax.

(50) "Video lottery terminal" has the same meaning as in Ohio R.C. 3770.21.

(51) "Video lottery terminal sales agent" means a lottery sales agent licensed under Ohio R.C. Chapter 3770 to conduct video lottery terminals on behalf of the state pursuant to Ohio R.C. 3770.21.

(Ord. 2015-52. Passed 12-14-15.)

194.03 IMPOSITION OF TAX.

The income tax levied by Parma Heights at a rate of three percent is levied on the Municipal taxable income of every person residing in and/or earning and/or receiving income in Parma Heights.

Individuals.

(a) For residents of Parma Heights, the income tax levied herein shall be on all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident. This is further detailed in the definition of income (Section 194.02(c)(16)).

(b) For nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive

share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(c) For residents and nonresidents, income can be reduced to "Municipal taxable income" as defined in Section 194.02(c)(21). Exemptions which may apply are specified in Section 194.02(c)(12).

Refundable Credit for Nonqualified Deferred Compensation Plan.

(d) (1) As used in this division:

A. "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.

B. "Qualifying loss" means the amount of compensation attributable to a taxpayer's nonqualified deferred compensation plan, less the receipt of money and property attributable to distributions from the nonqualified deferred compensation plan. Full loss is sustained if no distribution of money and property is made by the nonqualified deferred compensation plan. The taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.

C. 1. "Qualifying tax rate" means the applicable tax rate for the taxable year for the which the taxpayer paid income tax to Parma Heights with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

2. If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to Parma Heights each year with respect to the nonqualified deferred compensation plan.

D. "Refundable credit" means the amount of Parma Heights income tax that was paid on the non-distributed portion, if any, of a nonqualified deferred compensation plan.

(2) If, in addition to Parma Heights, a taxpayer has paid tax to other municipal corporations with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.

(3) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to Parma Heights for all taxable years with respect to the nonqualified deferred compensation plan.

(4) The credit allowed under this division is allowed only to the extent the taxpayer's qualifying loss is attributable to:

A. The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or

B. The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

Domicile.

(e) (1) A. An individual is presumed to be domiciled in Parma Heights for all or part of a taxable year if the individual was domiciled in Parma Heights on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in Parma Heights for all or part of the taxable year.

B. An individual may rebut the presumption of domicile described in division (e)(1)A. of this section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in Parma Heights for all or part of the taxable year.

(2) For the purpose of determining whether an individual is domiciled in Parma Heights for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:

A. The individual's domicile in other taxable years;

B. The location at which the individual is registered to vote;

C. The address on the individual's driver's license;

D. The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;

E. The location and value of abodes owned or leased by the individual;

F. Declarations, written or oral, made by the individual regarding the individual's residency;

G. The primary location at which the individual is employed;

H. The location of educational institutions attended by the individual's dependents as defined in section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation where the educational institution is located;

I. The number of contact periods the individual has with Parma Heights. For the purposes of this division, an individual has one "contact period" with Parma Heights if the individual is away overnight from the individual's abode located outside of Parma Heights and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in Parma Heights.

(3) All additional applicable factors are provided in the Rules and Regulations.

Businesses.

(f) This division applies to any taxpayer engaged in a business or profession in Parma Heights, unless the taxpayer is an individual who resides in Parma Heights or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Ohio R.C. Chapter 5745.

(1) Except as otherwise provided in divisions (f)(2) and (g) of this section, net profit from a business or profession conducted both within and without the boundaries of Parma Heights shall be considered as having a taxable situs in Parma Heights for purposes of Municipal income taxation in the same proportion as the average ratio of the following:

A. The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in Parma Heights during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

B. Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in Parma Heights to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under Section 194.04(c);

C. Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in Parma Heights to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(2) A. If the apportionment factors described in division (f)(1) of this section do not fairly represent the extent of a taxpayer's business activity in Parma Heights, the taxpayer may request, or the Tax Administrator of Parma Heights may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

1. Separate accounting;
2. The exclusion of one or more of the factors;
3. The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;
4. A modification of one or more of the factors.

B. A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the

Tax Administrator denies the request in an assessment issued within the period prescribed by Section 194.12(a).

C. The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (f)(2)A. of this section, but only by issuing an assessment to the taxpayer within the period prescribed by Section 194.12(a).

D. Nothing in division (f)(2) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(3) As used in division (f)(1)B. of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

A. A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:

1. The employer;
2. A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
3. A vendor, customer, client, or patient of a person described in division (f)(3)A.2. of this section, or a related member of such a vendor, customer, client, or patient.

B. Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;

C. Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (f)(3)A. or B. of this section solely in order to avoid or reduce the employer's Municipal income tax liability. If the Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(4) For the purposes of division (f)(1)C of this section, and except as provided in division (g) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

A. Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in Parma Heights if, regardless of where title passes, the property meets any of the following criteria:

1. The property is shipped to or delivered within Parma Heights from a stock of goods located within Parma Heights.

2. The property is delivered within Parma Heights from a location outside Parma Heights, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within Parma Heights and the sales result from such solicitation or promotion.

3. The property is shipped from a place within Parma Heights to purchasers outside Parma Heights, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

B. Gross receipts from the sale of services shall be situated to Parma Heights to the extent that such services are performed in Parma Heights.

C. To the extent included in income, gross receipts from the sale of real property located in Parma Heights shall be situated to Parma Heights.

D. To the extent included in income, gross receipts from rents and royalties from real property located in Parma Heights shall be situated to Parma Heights.

E. Gross receipts from rents and royalties from tangible personal property shall be situated to Parma Heights based upon the extent to which the tangible personal property is used in Parma Heights.

(5) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual, or by a disregarded entity owned by the individual, shall be subject to Parma Heights' tax only if the property generating the net profit is located in Parma Heights or if the individual taxpayer that receives the net profit is a resident of Parma Heights. Parma Heights shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.

(6) A. Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to Parma Heights, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in Parma Heights to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

B. An individual who is a resident of Parma Heights shall report the individual's net profit from all real estate activity on the individual's annual tax return for Parma Heights. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under Parma Heights' income tax ordinance.

(7) When calculating the ratios described in division (f)(1) of this section for the purposes of that division or division (f)(2) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

(g) (1) As used in this division:

A. “Qualifying remote employee or owner” means an individual who is an employee of a taxpayer or who is a partner or member holding an ownership interest in a taxpayer that is treated as a partnership for federal income tax purposes, provided that the individual meets both of the following criteria:

1. The taxpayer has assigned the individual to a qualifying reporting location.

2. The individual is permitted or required to perform services for the taxpayer at a qualifying remote work location.

B. “Qualifying remote work location” means a permanent or temporary location at which an employee or owner chooses or is required to perform services for the taxpayer, other than a reporting location of the taxpayer or any other location owned or controlled by a customer or client of the taxpayer. “Qualifying remote work location” may include the residence of an employee or owner and may be located outside of a municipal corporation that imposes an income tax in accordance with this chapter. An employee or owner may have more than one qualifying remote work location during a taxable year.

C. “Reporting location” means either of the following:

1. A permanent or temporary place of doing business, such as an office, warehouse, storefront, construction site, or similar location, that is owned or controlled directly or indirectly by the taxpayer;

2. Any location in this state owned or controlled by a customer or client of the taxpayer, provided that the taxpayer is required to withhold taxes under Section 194.04 of this chapter, on qualifying wages paid to an employee for the performance of personal services at that location.

D. “Qualifying reporting location” means one of the following:

1. The reporting location in this state at which an employee or owner performs services for the taxpayer on a regular or periodic basis during the taxable year;

2. If no reporting location exists in this state for an employee or owner under division g(1)D1 of this section, the reporting location in this state at which the employee’s or owner’s supervisor regularly or periodically reports during the taxable year;

3. If no reporting location exists in this state for an employee or owner under division g(1)D1 of this section, the location that the taxpayer otherwise assigns as the employee’s or owner’s qualifying reporting location, provided the assignment is made in good faith and is recorded and maintained in the taxpayer’s business records. A taxpayer may change the qualifying reporting location designated for an employee or owner under this division at any time.

(2) For tax years ending on or after December 31, 2023, a taxpayer may elect to apply the provisions of this division to the apportionment of its net profit from a business or

profession. For taxpayers that make this election, the provisions of division (f) of this section apply to such apportionment except as otherwise provided in this division.

A taxpayer shall make the election allowed under this division in writing on or with the taxpayer's net profit return or, if applicable, a timely filed amended net profit or a timely filed appeal of an assessment. The election applies to the taxable year for which that return or appeal is filed and for all subsequent taxable years, until the taxpayer revokes the election.

The taxpayer shall make the initial election with the tax administrator of each municipal corporation with which, after applying the apportionment provisions authorized in this division, the taxpayer is required to file a net profit tax return for that taxable year. A taxpayer shall not be required to notify the tax administrator of a municipal corporation in which a qualifying remote employee's or owner's qualifying remote work location is located, unless the taxpayer is otherwise required to file a net profit return with that municipal corporation due to business operations that are unrelated to the employee's or owner's activity at the qualifying remote work location.

After the taxpayer makes the initial election, the election applies to every municipal corporation in which the taxpayer conducts business. The taxpayer shall not be required to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in such municipal corporation.

Nothing in this division prohibits a taxpayer from making a new election under this division after properly revoking a prior election.

(3) For the purpose of calculating the ratios described in division (f)(1) of this section, all of the following apply to a taxpayer that has made the election described in division (f)(2):

A. For the purpose of division (f)(1)A of this section, the average original cost of any tangible personal property used by a qualifying remote employee or owner at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

B. For the purpose of division (f)(1)B of this section, any wages, salaries, and other compensation paid during the taxable period to a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

C. For the purpose of division (f)(1)C of this section, and notwithstanding division (f)(4) of this section, any gross receipts of the business or profession from services performed during the taxable period by a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(4) Nothing in this division prevents a taxpayer from requesting, or a tax administrator from requiring, that the taxpayer use, with respect to all or a portion of the income of the

taxpayer, an alternative apportionment method as described in division (f)(2) of this section. However, a tax administrator shall not require an alternative apportionment method in such a manner that it would require a taxpayer to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in that municipal corporation.

(5) Except as otherwise provided in this division, nothing in this division is intended to affect the withholding of taxes on qualifying wages pursuant to Section 194.04 of this chapter.

(Ord. 2015-52. Passed 12-14-15.)

194.04 COLLECTION AT SOURCE.

Withholding Provisions.

(a) Each employer, agent of an employer, or other payer located or doing business in Parma Heights shall withhold an income tax from the qualifying wages earned and/or received by each employee in Parma Heights. Except for qualifying wages for which withholding is not required under Section 194.03 or division (b)(4) or (b)(6) of this section, the tax shall be withheld at the rate, specified in Section 194.01(b)(1), of three percent. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

(b) (1) Except as provided in division (b)(2) of this section, an employer, agent of an employer, or other payer shall remit to the Tax Administrator of Parma Heights the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer according to the following schedule:

A. Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of Parma Heights in the preceding calendar year exceeded two thousand three hundred ninety-nine dollars (\$2,399), or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of Parma Heights in any month of the preceding calendar quarter exceeded two hundred dollars (\$200.00).

Payment under division (b)(1)A. of this section shall be made so that the payment is received by the Tax Administrator not later than fifteen days after the last day of each month for which the tax was withheld.

B. Any employer, agent of an employer, or other payer not required to make payments under division (b)(1)A. of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the fifteenth day of the month following the end of each calendar quarter.

C. Notwithstanding the provisions of division (b)(1)A. and B. of this section, taxes required to be deducted and withheld shall be remitted semimonthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld on behalf of Parma Heights in the preceding calendar year exceeded eleven thousand nine hundred and ninety-nine dollars (\$11,999), or if in any month of the preceding calendar year exceeded one thousand dollars (\$1,000). Payment under division (b)(1)C. of this section shall be made so that the payment is received by the Tax Administrator not later than one of the following:

1. If the taxes were deducted and withheld or required to be deducted and withheld during the first fifteen days of a month, the third banking day after the fifteenth day of that month;

2. If the taxes were deducted and withheld or required to be deducted and withheld after the fifteenth day of a month and before the first day of the immediately following month, the third banking day after the last day of the month.

(2) If the employer, agent of an employer, or other payer is required to make payments electronically for the purpose of paying Federal taxes withheld on payments to employees under section 6302 of the Internal Revenue Code, 26 C.F.R. 31.6302-1, or any other Federal statute or regulation, the payment and subsequent payments, based on the Tax Administrator's determination, may be required to be made by electronic funds transfer to the Tax Administrator of all taxes deducted and withheld on behalf of Parma Heights. The payment of tax by electronic funds transfer under this division does not affect an employer's, agent's, or other payer's obligation to file any return as required under this section.

(3) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by Tax Administrator and Parma Heights as the return required of a non-resident employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer.

(4) An employer, agent of an employer, or other payer is not required to withhold Parma Heights income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.

(5) A. An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.

B. The failure of an employer, agent of an employer, or other payer to remit to Parma Heights the tax withheld relieves the employee from liability for that tax unless the

employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.

(6) Compensation deferred before June 26, 2003, is not subject to Parma Heights income tax or income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

(7) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld, and such amount shall be deemed to be held in trust for Parma Heights until such time as the withheld amount is remitted to the Tax Administrator.

(8) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Tax Administrator listing:

A. The names, addresses, and Social Security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for Parma Heights during the preceding calendar year;

B. The amount of tax withheld, if any, from each such employee, the total amount of qualifying wages paid to such employee during the preceding calendar year;

C. The name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year;

D. Any other information required for Federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee;

E. Other information as may be required by the Tax Administrator.

(9) The officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. The dissolution of an employer, agent of an employer, or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of an employer, or other payer to file returns or pay any tax due.

(10) An employer is required to deduct and withhold Parma Heights income tax on tips and gratuities received by the employer's employees and constituting qualifying wages, but only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.

(11) The Tax Administrator shall consider any tax withheld by an employer at the request of an employee, when such tax is not otherwise required to be withheld by this chapter, to be tax required to be withheld and remitted for the purposes of this section.

Occasional Entrant - Withholding.

(c) (1) As used in this division:

A. "Employer" includes a person that is a related member to or of an employer.

B. "Fixed location" means a permanent place of doing business in this State, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.

C. "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this State to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this State at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (c)(2)A.1. of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

For the purposes of this division, the location at which an employee spends a particular day shall be determined in accordance with division (c)(2)B. of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

D. "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.

E. "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.

F. "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.

G. "Worksite location" means a construction site or other temporary worksite in this State at which the employer provides services for more than twenty days during the calendar year. "Worksite location" does not include the home of an employee.

(2) A. Subject to divisions (c)(3), (c)(5), (c)(6), and (c)(7) of this section, an employer is not required to withhold Parma Heights income tax on qualifying wages paid to an employee for the performance of personal services in Parma Heights if the employee performed such services in Parma Heights on twenty or fewer days in a calendar year, unless one of the following conditions applies:

1. The employee's principal place of work is located in Parma Heights.

2. The employee performed services at one or more presumed worksite locations in Parma Heights. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in Parma Heights at which the employer provides or provided services that can reasonably be, or would have been, expected by the employer to last more than twenty days in a calendar year. Services can "reasonably be expected by the employer to last more than twenty days" if either of the following applies at the time the services commence:

- a. The nature of the services are such that it will require more than twenty days of the services to complete the services;

- b. The agreement between the employer and its customer to perform services at a location requires the employer to perform the services at the location for more than twenty days.

3. The employee is a resident of Parma Heights and has requested that the employer withhold tax from the employee's qualifying wages as provided in Section 194.04.

4. The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.

B. For the purposes of division (c)(2)A. of this section, an employee shall be considered to have spent a day performing services in Parma Heights only if the employee spent more time performing services for or on behalf of the employer in Parma Heights than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:

1. Traveling to the location at which the employee will first perform services for the employer for the day;

2. Traveling from a location at which the employee was performing services for the employer to any other location;

3. Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled,

fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;

4. Transporting or delivering property described in division (c)(2)B.3. of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;

5. Traveling from the location at which the employee makes the employee's final delivery or pickup for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.

(3) If the principal place of work of an employee is located in another Ohio municipal corporation that imposes an income tax, the exception from withholding requirements described in division (c)(2)A. of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to that municipal corporation.

(4) A. Except as provided in division (c)(4)B. of this section, if, during a calendar year, the number of days an employee spends performing personal services in Parma Heights exceeds the twenty day threshold, the employer shall withhold and remit tax to Parma Heights for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in Parma Heights.

B. An employer required to begin withholding tax for Parma Heights under division (c)(4)A. of this section may elect to withhold tax for Parma Heights for the first twenty days on which the employer paid qualifying wages to the employee for personal services performed in Parma Heights.

(5) If an employer's fixed location is Parma Heights and the employer qualifies as a small employer as defined in Section 194.02, the employer shall withhold Municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to Parma Heights, regardless of the number of days which the employee worked outside the corporate boundaries of Parma Heights.

To determine whether an employer qualifies as a small employer for a taxable year, the employer will be required to provide the Tax Administrator with the employer's Federal income tax return for the preceding taxable year.

(6) Divisions (c)(2)A. and (c)(4) of this section shall not apply to the extent that the Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of Section 194.04.

(Ord. 2015-52. Passed 12-14-15.)

194.05 ANNUAL RETURN; FILING.

(a) (1) An annual Parma Heights income tax return shall be completed and filed by every individual taxpayer ~~eighteen years of age or older and any taxpayer that is not an individual~~ for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

(2) The Tax Administrator may accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer under Section 194.04 when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due Parma Heights.

(b) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(c) If an individual is unable to complete and file a return or notice required by Parma Heights, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.

(d) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust.

(e) Parma Heights shall permit spouses to file a joint return.

(f) (1) Each return required to be filed under this division shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer. The return shall include the taxpayer's Social Security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.

(2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return and amended return, copies of the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's Federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040; and, with respect to an amended tax return, any other documentation necessary to support the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.

(3) The Tax Administrator may require a taxpayer that is not an individual to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other

documentation necessary to support the refund request or the adjustments made in the amended return.

A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio Business Gateway or in some other manner shall either mail the documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio Business Gateway.

(4) After a taxpayer files a tax return, the Tax Administrator may request, and the taxpayer shall provide, any information, statements, or documents required by Parma Heights to determine and verify the taxpayer's Municipal income tax liability. The requirements imposed under division (f) of this section apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.

(g) (1) A. Except as otherwise provided in this chapter, each return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of State individual income tax returns under division (G) of Ohio R.C. 5747.08. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to Parma Heights. No remittance is required if the net amount due is ten dollars (\$10.00) or less.

B. Except as otherwise provided in this chapter, each annual net profit return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to Parma Heights. No remittance is required if the net amount due is ten dollars (\$10.00) or less.

(2) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's Federal income tax return shall automatically receive an extension for the filing of Parma Heights' income tax return. The extended due date of Parma Heights' income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. For tax years ending on or after January 1, 2023, the extended due date of Parma Heights's income tax return for a taxpayer that is not an individual shall be the 15th day of the eleventh month after the last day of the taxable year to which the return relates. An extension of time to file under this division is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

A. A copy of the Federal extension request shall be included with the filing of Parma Heights' income tax return.

B. A taxpayer that has not requested or received a six-month extension for filing the taxpayer's Federal income tax return may submit a written request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's

Parma Heights income tax return. If the request is received by the Tax Administrator on or before the date the Parma Heights income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

(3) If the Tax Commissioner extends for all taxpayers the date for filing State income tax returns under division (G) of Ohio R.C. 5747.08, a taxpayer shall automatically receive an extension for the filing of Parma Heights' income tax return. The extended due date of Parma Heights' income tax return shall be the same as the extended due date of the State income tax return.

(4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by Parma Heights, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this division, including taxpayers not otherwise required to file annual returns.

(5) If a taxpayer receives an extension for the filing of a municipal income tax return under division (g)(2), (3), or (4) of this section, the tax administrator shall not make any inquiry or send any notice to the taxpayer with regard to the return on or before the date the taxpayer files the return or on or before the extended due date to file the return, whichever occurs first.

If a tax administrator violates division (g)(5) of this section, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to \$150.

Division (g)(5) of this section does not apply to an extension received under division (g)(2) of this section if the tax administrator has actual knowledge that the taxpayer failed to file for a federal extension as required to receive the extension under division (g)(2) of this section or failed to file for an extension under division (g)(2)B of this section.

~~(5 6)~~ To the extent that any provision in this division (g) of this section conflicts with any provision in divisions (n), (o), (p), or (q) of this section, the provisions in divisions (n), (o), (p), or (q) prevail.

(h) (1) For taxable years beginning after 2015, Parma Heights shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars (\$10.00) or less.

(2) Any taxpayer not required to remit tax to Parma Heights for a taxable year pursuant to division (h)(1) of this section shall file with Parma Heights an annual net profit return under division (f)(3) of this section.

(i) If a payment is required to be made by electronic funds transfer, the payment is considered to be made when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. This division shall not apply to payments required to be made under Section 194.04(b)(1)A. or provisions for semi-monthly withholding.

(j) Taxes withheld for Parma Heights by an employer, the agent of an employer, or other payer as described in Section 194.04 shall be allowed to the taxpayer as credits against payment of the tax imposed on the taxpayer by Parma Heights, unless the amounts withheld were not remitted to Parma Heights and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.

(k) Each return required by Parma Heights to be filed in accordance with this division shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return.

(l) The Tax Administrator shall accept for filing a generic form of any income tax return, report, or document required by Parma Heights, provided that the generic form, once completed and filed, contains all of the information required by ordinance, resolution, or rules and regulations adopted by Parma Heights or the Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this chapter and of Parma Heights' ordinance, resolution, or rules and regulations governing the filing of returns, reports, or documents.

Filing via Ohio Business Gateway.

(m) (1) Any taxpayer subject to Municipal income taxation with respect to the taxpayer's net profit from a business or profession may file Parma Heights' income tax return, estimated Municipal income tax return, or extension for filing a Municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.

(2) Any employer, agent of an employer, or other payer may report the amount of Municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.

(3) Nothing in this section affects the due dates for filing employer withholding tax returns.

Extension for Service in or for the Armed Forces.

(n) Each member of the national guard of any state and each member of a reserve component of the Armed Forces of the United States called to active duty pursuant to an executive order issued by the President of the United States or an act of the Congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the Armed Forces, may apply to the Tax Administrator of Parma Heights for both an extension of time for filing of the return and an extension of time for payment of taxes required by Parma Heights during the period of the member's or civilian's duty service, and for 180 days thereafter. The application shall be filed on or before the 180th day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

(o) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the 181st day after the applicant's active duty or service terminates. The Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate. However, taxes pursuant to a contract entered into under this division are not delinquent, and the Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(2) If the Tax Administrator determines that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to Parma Heights before the 181st day after the applicant's active duty or service terminates.

(3) Taxes paid pursuant to a contract entered into under division (o)(1) of this section are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(p) (1) Nothing in this division denies to any person described in this division the application of divisions (n) and (o) of this section.

(2) A. A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by Parma Heights in accordance with this chapter. The length of any extension granted under division (p)(2)A. of this section shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this division, "qualifying taxpayer" means a member of the national guard or a member of a reserve component of the Armed Forces of the United States called to active duty pursuant to either an executive order issued by the President of the United States or an act of the Congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the Armed Forces.

B. Taxes whose payment is extended in accordance with division (p)(2)A. of this section are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (c)(2)A. of this section in calculating the penalty or interest due on any unpaid tax.

(q) For each taxable year to which division (n), (o), or (p) of this section applies to a taxpayer, the provisions of divisions (o)(2) and (o)(3) of this section, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

Consolidated Municipal Income Tax Return.

(r) As used in this section:

(1) "Affiliated group of corporations" means an affiliated group as defined in section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this State, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

(2) "Consolidated Federal income tax return" means a consolidated return filed for Federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

(3) "Consolidated Federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated Federal income tax return, before consideration of net operating losses or special deductions. "Consolidated Federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (r)(1) of this section.

(4) "Incumbent local exchange carrier" has the same meaning as in Ohio R.C. 4927.01.

(5) "Local exchange telephone service" has the same meaning as in Ohio R.C. 5727.01.

(s) (1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated Municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to Parma Heights' income tax in that taxable year, and if the affiliated group of corporations filed a consolidated Federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under Federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated Municipal income tax returns under division (s)(2) of this section or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(2) An election to discontinue filing consolidated Municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated Municipal income tax return election period in effect under division (s)(1) of this section. The election to discontinue filing a consolidated Municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (s)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a Municipal income tax.

(t) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated Federal income tax return for a taxable year shall file a consolidated Parma Heights income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to Parma Heights. A taxpayer that is required to file a

consolidated Parma Heights income tax return for a taxable year shall file a consolidated Parma Heights income tax return for all subsequent taxable years, unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.

(u) A taxpayer shall prepare a consolidated Parma Heights income tax return in the same manner as is required under the United States Department of Treasury regulations that prescribe procedures for the preparation of the consolidated Federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(v) (1) Except as otherwise provided in divisions (v)(2), (v)(3), and (v)(4) of this section, corporations that file a consolidated Municipal income tax return shall compute adjusted Federal taxable income, as defined in Section 194.02, by substituting "consolidated Federal taxable income" for "Federal taxable income" wherever "Federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated Parma Heights income tax return shall make any adjustment otherwise required under Section 194.02(c)(1) to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated Federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least eighty percent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated Federal taxable income for a taxable year, the corporation filing a consolidated Parma Heights income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

A. Exclude the pass-through entity's net profit or loss from the consolidated Federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (r) through (y) of this section, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to Parma Heights. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated Federal taxable income of the affiliated group.

B. Include the pass-through entity's net profit or loss in the consolidated Federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (r) through (y) of this section, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to Parma Heights. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated Federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than eighty percent of the value of its ownership interest owned or controlled, directly or indirectly, by an

affiliated group of corporations is included in that affiliated group's consolidated Federal taxable income for a taxable year, all of the following shall apply:

A. The corporation filing the consolidated Municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated Federal taxable income of the affiliated group and, for the purposes of making the computations required in divisions (r) through (y) of this section, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to Parma Heights;

B. The pass-through entity shall be subject to Parma Heights income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated Federal taxable income of the affiliated group.

(w) Corporations filing a consolidated Parma Heights income tax return shall make the computations required under divisions (r) through (y) of this section by substituting "consolidated Federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(x) Each corporation filing a consolidated Parma Heights income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by Parma Heights in accordance with this chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

(y) Corporations and their affiliates that made an election or entered into an agreement with Parma Heights before January 1, 2016, to file a consolidated or combined tax return with Parma Heights may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.

(Ord. 2015-52. Passed 12-14-15.)

194.06 CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES.

(a) Every individual taxpayer domiciled in Parma Heights who is required to and does pay, or has acknowledged liability for, a municipal tax to another municipality on or measured by the same income, qualifying wages, commissions, net profits or other compensation taxable under this chapter may claim a nonrefundable credit upon satisfactory evidence of the tax paid to the other municipality. Subject to division (c) of this section, the credit shall not exceed 100 percent of the amount obtained by multiplying the income, qualifying wages, commissions, net profits or other compensation subject to tax in the other municipality by the tax rate in such other municipality or the rate of two percent, whichever is lower.

(b) Parma Heights shall grant a credit against its tax on income to a resident of Parma Heights who works in a joint economic development zone created under Ohio R.C. 715.691 or a joint economic development district created under Ohio R.C. 715.70, 715.71, or 715.72 to the same extent that it grants a credit against its tax on income to its residents who are employed in another municipal corporation.

(c) If the amount of tax withheld or paid to the other municipality is less than the amount of tax required to be withheld or paid to the other municipality, then for purposes of division (a) of this section, the income, qualifying wages, commissions, net profits or other compensation subject to tax in the other municipality shall be limited to the amount computed by dividing the tax withheld or paid to the other municipality by the tax rate for that municipality.

(Ord. 2015-52. Passed 12-14-15.)

194.07 ESTIMATED TAXES.

(a) As used in this section:

(1) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for Parma Heights' income tax for the current taxable year.

(2) "Tax liability" means the total taxes due to Parma Heights for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.

(b) (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least two hundred dollars (\$200.00). For the purposes of this section:

A. Taxes withheld for Parma Heights from qualifying wages shall be considered as paid to Parma Heights in equal amounts on each payment date unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case they shall be considered as paid on the dates on which the amounts were actually withheld.

B. An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(2) Taxpayers filing joint returns shall file joint declarations of estimated taxes. A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. A taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the Tax Administrator.

(3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of Municipal income tax returns under Section 194.05(g) or on or before the fifteenth day of the fourth month after the taxpayer becomes subject to tax for the first time.

(4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.

(5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.

(c) (1) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to Parma Heights, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:

A. On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half percent of the tax liability for the taxable year;

B. On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five percent of the tax liability for the taxable year;

C. On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half percent of the tax liability for the taxable year;

D. For an individual, on or before the fifteenth day of the first month of the following taxable year, ninety percent of the tax liability for the taxable year. For a person other than an individual, on or before the fifteenth day of the twelfth month of the taxable year, ninety percent of the tax liability for the taxable year.

(2) When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates.

(3) On or before the fifteenth day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with Section 194.05.

(d) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to Section 194.18 upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (e) of this section. The amount of the underpayment shall be determined as follows:

A. For the first payment of estimated taxes each year, twenty-two and one-half percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

B. For the second payment of estimated taxes each year, forty-five percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

C. For the third payment of estimated taxes each year, sixty-seven and one-half percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

D. For the fourth payment of estimated taxes each year, ninety percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment.

(2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.

(e) An underpayment of any portion of tax liability determined under division (d) of this section shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:

(1) The amount of estimated taxes that were paid equals at least ninety percent of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.

(2) The amount of estimated taxes that were paid equals at least 100 percent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return with Parma Heights under Section 194.05 for that year.

(3) The taxpayer is an individual who resides in Parma Heights but was not domiciled here on the first day of January of the calendar year that includes the first day of the taxable year.

(Ord. 2015-52. Passed 12-14-15; Ord. 2018-3. Passed 1-22-18.)

194.08 ROUNDING OF AMOUNTS.

A person may round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher, or other document required under this chapter. Any fractional part of a dollar that equals or exceeds fifty cents (\$.50) shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than fifty cents (\$.50) shall be dropped. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.

(Ord. 2015-52. Passed 12-14-15.)

194.09 REQUESTS FOR REFUNDS.

(a) As used in this section, "withholding tax" has the same meaning as in Section 194.18.

(b) Upon receipt of a request for a refund, the Tax Administrator, in accordance with this section, shall refund to employers, agents of employers, other payers, or taxpayers, with respect to any income or withholding tax levied by Parma Heights:

(1) Overpayments of ten dollars (\$10.00) or more;

(2) Amounts paid erroneously if the refund requested is ten dollars (\$10.00) or more.

(c) (1) Except as otherwise provided in this chapter, requests for refund shall be filed with the Tax Administrator, on the form prescribed by the Tax Administrator within three years after the tax was due or paid, whichever is later. The Tax Administrator may require the requestor to file with the request any documentation that substantiates the requestor's claim for a refund.

(2) On filing of the refund request, the Tax Administrator shall determine the amount of refund due and certify such amount to the appropriate municipal corporation official for payment. Except as provided in division (c)(3) of this section, the Administrator shall issue an assessment to any taxpayer whose request for refund is fully or partially denied. The assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the assessment.

(3) If a Tax Administrator denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the Tax Administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an assessment that may be appealed under Section 194.21.

(d) A request for a refund that is received after the last day for filing specified in division (c) of this section shall be considered to have been filed in a timely manner if any of the following situations exist:

(1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request.

(2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven days of such last day.

(3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven days of the last day for making the request.

(e) Interest shall be allowed and paid on any overpayment by a taxpayer of any Municipal income tax obligation from the date of the overpayment until the date of the

refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in Section 194.18(a)(4).

(Ord. 2015-52. Passed 12-14-15.)

194.10 SECOND MUNICIPALITY IMPOSING TAX AFTER TIME PERIOD ALLOWED FOR REFUND.

(a) Income tax that has been deposited with Parma Heights, but should have been deposited with another municipality, is allowable by Parma Heights as a refund but is subject to the three-year limitation on refunds.

(b) Income tax that was deposited with another municipality but should have been deposited with Parma Heights is subject to recovery by Parma Heights. If Parma Heights' tax on that income is imposed after the time period allowed for a refund of the tax or withholding paid to the other municipality, Parma Heights shall allow a nonrefundable credit against the tax or withholding Parma Heights claims is due with respect to such income or wages, equal to the tax or withholding paid to the first municipality with respect to such income or wages.

(c) If Parma Heights' tax rate is less than the tax rate in the other municipality, then the nonrefundable credit shall be calculated using Parma Heights' tax rate. However, if Parma Heights' tax rate is greater than the tax rate in the other municipality, the tax due in excess of the nonrefundable credit is to be paid to Parma Heights, along with any penalty and interest that accrued during the period of nonpayment.

(d) Nothing in this section permits any credit carryforward.

(Ord. 2015-52. Passed 12-14-15.)

194.11 AMENDED RETURNS.

(a) (1) If a taxpayer's tax liability shown on the annual tax return for Parma Heights changes as a result of an adjustment to the taxpayer's Federal or State income tax return, the taxpayer shall file an amended return with Parma Heights. The amended return shall be filed on a form required by the Tax Administrator.

(2) If a taxpayer intends to file an amended consolidated Municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated Federal income tax return, the taxpayer shall notify the Tax Administrator before filing the amended return.

(b) (1) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due, together with any penalty and interest thereon. If the combined tax shown to be due is ten dollars (\$10.00) or less, no payment need be made. The amended return shall reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's Federal or State income tax return only:

A. To determine the amount of tax that would be due if all facts, figures, computations, and attachments were reopened; or

B. If the applicable statute of limitations for civil actions or prosecutions under Section 194.12 has not expired for a previously filed return.

(2) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations, and attachments were reopened; i.e., the payment shall be the lesser of the two amounts.

(c) (1) In the case of an overpayment, a request for refund may be filed under this division within the period prescribed by division (d) of this section for filing the amended return, even if it is filed beyond the period prescribed in that division if it otherwise conforms to the requirements of that division. If the amount of the refund is less than ten dollars (\$10.00), no refund need be paid by Parma Heights. A request filed under this division shall claim refund of overpayments resulting from alterations only to those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's Federal or State income tax return, unless it is also filed within the time prescribed in Section 194.09.

(2) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations, and attachments were reopened. All facts, figures, computations, and attachments may be reopened to determine the refund amount due by inclusion of all facts, figures, computations, and attachments.

(d) Within sixty days after the final determination of any Federal or State tax liability affecting the taxpayer's Parma Heights' tax liability, that taxpayer shall make and file an amended Parma Heights return showing income subject to Parma Heights income tax based upon such final determination of Federal or State tax liability. The taxpayer shall pay any additional Parma Heights income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is less than ten dollars (\$10.00).

(Ord. 2015-52. Passed 12-14-15.)

194.12 LIMITATIONS.

(a) (1) A. Civil actions to recover Municipal income taxes and penalties and interest on Municipal income taxes shall be brought within the later of:

1. Three years after the tax was due or the return was filed, whichever is later; or

2. One year after the conclusion of the qualifying deferral period, if any.

B. The time limit described in division (a)(1)A. of this section may be extended at any time if both the Tax Administrator and the employer, agent of the employer, other payer, or taxpayer consent in writing to the extension. Any extension shall also extend for the same period of time the time limit described in division (c) of this section.

(2) As used in this section, "qualifying deferral period" means a period of time beginning and ending as follows:

A. Beginning on the date a person who is aggrieved by an assessment files with the Board of Tax Appeals the request described in Section 194.21. That date shall not be affected by any subsequent decision, finding, or holding by any administrative body or court that the Board of Tax Appeals did not have jurisdiction to affirm, reverse, or modify the assessment or any part of that assessment.

B. Ending the later of the sixtieth day after the date on which the final determination of the Board of Tax Appeals becomes final or, if any party appeals from the determination of the Board of Tax Appeals, the sixtieth day after the date on which the final determination of the Board of Tax Appeals is either ultimately affirmed in whole or in part or ultimately reversed and no further appeal of either that affirmation, in whole or in part, or that reversal is available or taken.

(b) Prosecutions for an offense made punishable under a resolution or this chapter imposing an income tax shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

(c) A claim for a refund of Municipal income taxes shall be brought within the time limitation provided in Section 194.09.

(d) (1) Notwithstanding the fact that an appeal is pending, the petitioner may pay all or a portion of the assessment that is the subject of the appeal. The acceptance of a payment by Parma Heights does not prejudice any claim for refund upon final determination of the appeal.

(2) If upon final determination of the appeal an error in the assessment is corrected by the Tax Administrator, upon an appeal so filed or pursuant to a final determination of the Board of Tax Appeals, of the Ohio Board of Tax Appeals, or any court to which the decision of the Ohio Board of Tax Appeals has been appealed, so that the resultant amount due is less than the amount paid, a refund will be paid in the amount of the overpayment as provided by Section 194.09, with interest on that amount as provided by Section 194.09(e).

(e) No civil or criminal action to recover Parma Heights income tax or related penalties or interest shall be brought during either of the following time periods:

(1) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties;

(2) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

(Ord. 2015-52. Passed 12-14-15.)

194.13 AUDITS.

(a) At or before the commencement of an audit, the Tax Administrator shall provide to the taxpayer a written description of the roles of the Tax Administrator and of the taxpayer during the audit and a statement of the taxpayer's rights, including any right to obtain a refund of an overpayment of a tax. At or before the commencement of an audit, the Tax Administrator shall inform the taxpayer when the audit is considered to have commenced.

(b) Except in cases involving suspected criminal activity, the Tax Administrator shall conduct an audit of a taxpayer during regular business hours and after providing reasonable notice to the taxpayer. A taxpayer who is unable to comply with a proposed time for an audit on the grounds that the proposed time would cause inconvenience or hardship must offer reasonable alternative dates for the audit.

(c) At all stages of an audit by the Tax Administrator, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. The Tax Administrator shall prescribe a form by which a taxpayer may designate such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the Tax Administrator. If a taxpayer has not submitted such a form, the Tax Administrator may accept other evidence, as the Tax Administrator considers appropriate, that a person is the authorized representative of a taxpayer.

A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner.

This division does not authorize the practice of law by a person who is not an attorney.

(d) A taxpayer may record, electronically or otherwise, the audit examination.

(e) The failure of the Tax Administrator to comply with a provision of this section shall neither excuse a taxpayer from payment of any taxes owed by the taxpayer nor cure any procedural defect in a taxpayer's case.

(f) If the Tax Administrator fails to substantially comply with the provisions of this section, the Tax Administrator, upon application by the taxpayer, shall excuse the taxpayer from penalties and interest.

(Ord. 2015-52. Passed 12-14-15.)

194.14 SERVICE OF ASSESSMENT.

(a) As used in this section:

(1) "Last known address" means the address the Tax Administrator has at the time a document is originally sent by certified mail, or any address the Tax Administrator can ascertain using reasonable means such as the use of a change of address service offered by the postal service or an authorized delivery service under Ohio R.C. 5703.056.

(2) "Undeliverable address" means an address to which the postal service or an authorized delivery service under Ohio R.C. 5703.056 is not able to deliver an assessment of the Tax Administrator, except when the reason for non-delivery is because the addressee fails to acknowledge or accept the assessment.

(b) Subject to division (c) of this section, a copy of each assessment shall be served upon the person affected thereby either by personal service, by certified mail, or by a delivery service authorized under Ohio R.C. 5703.056. With the permission of the person affected by an assessment, the Tax Administrator may deliver the assessment through alternative means as provided in this section, including, but not limited to, delivery by secure electronic mail.

(c) (1) A. If certified mail is returned because of an undeliverable address, a Tax Administrator shall utilize reasonable means to ascertain a new last known address, including the use of a change of address service offered by the postal service or an authorized delivery service under Ohio R.C. 5703.056. If the Tax Administrator is unable to ascertain a new last known address, the assessment shall be sent by ordinary mail and considered served. If the ordinary mail is subsequently returned because of an undeliverable address, the assessment remains appealable within sixty days after the assessment's postmark.

B. Once the Tax Administrator or other Parma Heights official, or the designee of either, serves an assessment on the person to whom the assessment is directed, the person may protest the ruling of that assessment by filing an appeal with the local Board of Tax Appeals within sixty days after the receipt of service. The delivery of an assessment of the Tax Administrator under division (c)(1)A. of this section is prima facie evidence that delivery is complete and that the assessment is served.

(2) If mailing of an assessment by a Tax Administrator by certified mail is returned for some cause other than an undeliverable address, the Tax Administrator shall resend the assessment by ordinary mail. The assessment shall show the date the Tax Administrator sends the assessment and include the following statement:

"This assessment is deemed to be served on the addressee under applicable law ten days from the date this assessment was mailed by the Tax Administrator as shown on the assessment, and all periods within which an appeal may be filed apply from and after that date."

Unless the mailing is returned because of an undeliverable address, the mailing of that information is prima facie evidence that delivery of the assessment was completed ten

days after the Tax Administrator sent the assessment by ordinary mail and that the assessment was served.

If the ordinary mail is subsequently returned because of an undeliverable address, the Tax Administrator shall proceed under division (c)(1)A. of this section. A person may challenge the presumption of delivery and service under this division in accordance with division (d) of this section.

(d) (1) A person disputing the presumption of delivery and service under division (c) of this section bears the burden of proving by a preponderance of the evidence that the address to which the assessment was sent by certified mail was not an address with which the person was associated at the time the Tax Administrator originally mailed the assessment. For the purposes of this section, a person is associated with an address at the time the Tax Administrator originally mailed the assessment if, at that time, the person was residing, receiving legal documents, or conducting business at the address; or if, before that time, the person had conducted business at the address and, when the assessment was mailed, the person's agent or the person's affiliate was conducting business at the address. For the purposes of this section, a person's affiliate is any other person that, at the time the assessment was mailed, owned or controlled at least twenty percent, as determined by voting rights, of the addressee's business.

(2) If a person elects to appeal an assessment on the basis described in division (d)(1) of this section, and if that assessment is subject to collection and is not otherwise appealable, the person must do so within sixty days after the initial contact by the Tax Administrator or other Parma Heights official, or the designee of either, with the person. Nothing in this division prevents the Tax Administrator or other official from entering into a compromise with the person if the person does not actually file such an appeal with the local Board of Tax Appeals.

(e) Nothing in this section prohibits the Tax Administrator or the Tax Administrator's designee from delivering an assessment by personal service.

(f) Collection actions taken upon any assessment being appealed under division (c)(1)B. of this section, including those on which a claim has been delivered for collection, shall be stayed upon the pendency of an appeal under this section.

(g) Additional regulations as detailed in the Rules and Regulations shall apply.

(Ord. 2015-52. Passed 12-14-15.)

194.15 ADMINISTRATION OF CLAIMS.

(a) As used in this section, "claim" means a claim for an amount payable to Parma Heights that arises pursuant to Parma Heights's income tax imposed in accordance with this chapter.

(b) Nothing in this chapter prohibits a Tax Administrator from doing either of the following if such action is in the best interests of Parma Heights:

(1) Compromise a claim;

(2) Extend for a reasonable period the time for payment of a claim by agreeing to accept monthly or other periodic payments.

(c) The Tax Administrator's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable.

(d) A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall be to the benefit of only the parties to the compromise or agreement, and shall not eliminate or otherwise affect the liability of any other person.

(e) A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due.

(Ord. 2015-52. Passed 12-14-15.)

194.16 TAX INFORMATION CONFIDENTIAL.

(a) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this chapter is confidential, and no person shall access or disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of Parma Heights as authorized by this chapter. The Tax Administrator or a designee thereof may furnish copies of returns filed or otherwise received under this chapter and other related tax information to the Internal Revenue Service, the Tax Commissioner, and tax administrators of other municipal corporations.

(b) This section does not prohibit Parma Heights from publishing or disclosing statistics in a form that does not disclose information with respect to particular taxpayers.

(Ord. 2015-52. Passed 12-14-15.)

194.17 FRAUD.

No person shall knowingly make, present, aid, or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim, or document authorized or required by Parma Heights' ordinance or State law to be filed with the Tax Administrator, or knowingly procure, counsel, or advise the preparation or presentation of such report, return, schedule, statement, claim, or document, or knowingly change, alter, or amend, or knowingly procure, counsel or advise such change, alteration, or amendment of

the records upon which such report, return, schedule, statement, claim, or document is based with intent to defraud Parma Heights or the Tax Administrator.

(Ord. 2015-52. Passed 12-14-15.)

194.18 INTEREST AND PENALTIES.

(a) As used in this section:

(1) "Applicable law" means this chapter, the resolutions, chapters, codes, directives, instructions, and rules adopted by Parma Heights provided they impose or directly or indirectly address the levy, payment, remittance, or filing requirements of Parma Heights.

(2) "Federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year.

(3) "Income tax," "estimated income tax," and "withholding tax" means any income tax, estimated income tax, and withholding tax imposed by Parma Heights pursuant to applicable law, including at any time before January 1, 2016.

(4) "Interest rate as described in division (a) of this section" means the Federal short-term rate, rounded to the nearest whole number percent, plus five percent. The rate shall apply for the calendar year next following the July of the year in which the Federal short-term rate is determined in accordance with division (a)(2) of this section.

(5) "Return" includes any tax return, report, reconciliation, schedule, and other document required to be filed with the Tax Administrator or Parma Heights by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.

(6) "Unpaid estimated income tax" means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.

(7) "Unpaid income tax" means income tax due but not paid by the date the income tax is required to be paid under applicable law.

(8) "Unpaid withholding tax" means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.

(9) "Withholding tax" includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee's qualifying wages.

(b) (1) This section applies to the following:

A. Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;

B. Income tax, estimated income tax, and withholding tax required to be paid or remitted to Parma Heights on or after January 1, 2016.

(2) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the chapters or rules and regulations, as adopted before January 1, 2016, of Parma Heights to which the return is to be filed or the payment is to be made.

(c) Should any taxpayer, employer, agent of the employer, or other payer for any reason fail, in whole or in part, to make timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with Parma Heights any return required to be filed, the following penalties and interest shall apply:

(1) Interest shall be imposed at the rate described in division (a) of this section, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax.

(2) A. With respect to unpaid income tax and unpaid estimated income tax, Parma Heights may impose a penalty equal to fifteen percent of the amount not timely paid.

B. With respect to any unpaid withholding tax, Parma Heights may impose a penalty not exceeding fifty percent of the amount not timely paid.

(3) A. For tax years ending on or before December 31, 2022, wWith respect to returns other than estimated income tax returns, Parma Heights may impose a penalty of twenty-five dollars (\$25.00) for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed one hundred and fifty dollars (\$150.00) for each failure.

B. For tax years ending on or after January 1, 2023, with respect to returns other than estimated income tax returns, Parma Heights may impose a penalty not exceeding \$25 for each failure to timely file each return, regardless of the liability shown thereon, except that Parma Heights shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.

(d) Nothing in this section requires Parma Heights to refund or credit any penalty, amount of interest, charges, or additional fees that Parma Heights has properly imposed or collected before January 1, 2016.

(e) Nothing in this section limits the authority of Parma Heights to abate or partially abate penalties or interest imposed under this section when the Tax Administrator determines, in the Tax Administrator's sole discretion, that such abatement is appropriate.

(f) By October 31 of each year Parma Heights shall publish the rate described in division (a) of this section applicable to the next succeeding calendar year.

(g) Parma Heights may impose on the taxpayer, employer, any agent of the employer, or any other payer Parma Heights's post-judgment collection costs and fees, including attorney's fees.

(Ord. 2015-52. Passed 12-14-15; Ord. 2018-3. Passed 1-22-18.)

194.19 AUTHORITY OF TAX ADMINISTRATOR AND FINANCE DIRECTOR; VERIFICATION OF INFORMATION.

Authority.

(a) Nothing in this chapter shall limit the authority of the Tax Administrator to perform any of the following duties or functions, unless the performance of such duties or functions is expressly limited by a provision of the Ohio Revised Code:

(1) A. Exercise all powers whatsoever of a query nature as provided by law, including, the right to inspect books, accounts, records, memorandums, and Federal and State income tax returns, to examine persons under oath, to issue orders or subpoenas for the production of books, accounts, papers, records, documents, and testimony, to take depositions, to apply to a court for attachment proceedings as for contempt, to approve vouchers for the fees of officers and witnesses, and to administer oaths.

B. The powers referred to in this division of this section shall be exercised by the Tax Administrator only in connection with the performance of the duties respectively assigned to the Tax Administrator under Parma Heights' income tax ordinance;

(2) Appoint agents and prescribe their powers and duties;

(3) Confer and meet with officers of other municipal corporations and states and officers of the United States on any matters pertaining to their respective official duties as provided by law;

(4) Exercise the authority provided by law, including orders from bankruptcy courts, relative to remitting or refunding taxes, including penalties and interest thereon, for any reason overpaid. In addition, the Tax Administrator may investigate any claim of overpayment and, if the Tax Administrator finds that there has been an overpayment, make a written statement of the Tax Administrator's findings, and approve and issue a refund payable to the taxpayer, the taxpayer's assigns, or legal representative as provided in this chapter;

(5) Exercise the authority provided by law relative to consenting to the compromise and settlement of tax claims;

(6) Exercise the authority provided by law relative to the use of alternative apportionment methods by taxpayers in accordance with Section 194.03;

(7) A. Make all tax findings, determinations, computations, and orders the Tax Administrator is by law authorized and required to make and, pursuant to time limitations

provided by law, on the Tax Administrator's own motion, review, re-determine, or correct any tax findings, determinations, computations, or orders the Tax Administrator has made.

B. If an appeal has been filed with the Board of Tax Appeals or other appropriate tribunal, the Tax Administrator and Finance Director shall not review, re-determine, or correct any tax finding, determination, computation, or order which the Tax Administrator and Finance Director has made, unless such appeal or application is withdrawn by the appellant or applicant, is dismissed, or is otherwise final;

(8) Destroy any or all returns or other tax documents in the manner authorized by law;

(9) Enter into an agreement with a taxpayer to simplify the withholding obligations described in Section 194.04.

Verification of Accuracy of Returns and Determination of Liability.

(b) (1) A Tax Administrator, or any authorized agent or employee thereof may examine the books, papers, records, and Federal and State income tax returns of any employer, taxpayer, or other person that is subject to, or that the Tax Administrator believes is subject to, the provisions of this chapter for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due under this chapter. Upon written request by the Tax Administrator or a duly authorized agent or employee thereof, every employer, taxpayer, or other person subject to this section is required to furnish the opportunity for the Tax Administrator, authorized agent, or employee to investigate and examine such books, papers, records, and Federal and State income tax returns at a reasonable time and place designated in the request.

(2) The records and other documents of any taxpayer, employer, or other person that is subject to, or that a Tax Administrator believes is subject to, the provisions of this chapter shall be open to the Tax Administrator's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the Tax Administrator, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The Tax Administrator may require any person, by notice served on that person, to keep such records as the Tax Administrator determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by Parma Heights or for the withholding of such tax.

(3) The Tax Administrator may examine under oath any person that the Tax Administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Tax Administrator may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and Federal and State income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

(4) No person issued written notice by the Tax Administrator or Finance Director compelling attendance at a hearing or examination or the production of books, papers, records, or Federal or State income tax returns under this section shall fail to comply.

Identification Information.

(c) (1) Nothing in this chapter prohibits the Tax Administrator from requiring any person filing a tax document with the Tax Administrator to provide identifying information, which may include the person's Social Security number, Federal employer identification number, or other identification number requested by the Tax Administrator. A person required by the Tax Administrator to provide identifying information that has experienced any change with respect to that information shall notify the Tax Administrator of the change before, or upon, filing the next tax document requiring the identifying information.

(2) A. If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within thirty days of making the request, nothing in this chapter prohibits the Tax Administrator from imposing a penalty upon the person to whom the request was directed pursuant to Section 194.18, in addition to any applicable penalty described in Section 194.99.

B. If a person required by the Tax Administrator to provide identifying information does not notify the Tax Administrator of a change with respect to that information as required under Section 194.19(c) within thirty days after filing the next tax document requiring such identifying information, nothing in this chapter prohibits the Tax Administrator from imposing a penalty pursuant to Section 194.18.

C. The penalties provided for under divisions (c)(2)A. and B. of this section may be billed and imposed in the same manner as the tax or fee with respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in Section 194.99 for a violation of Section 194.17 and any other penalties that may be imposed by the Tax Administrator by law.

D. In the case of residents, it is incumbent upon the taxpayer to register with the Parma Heights income tax office within thirty days after the taxpayer becomes a resident of Parma Heights. Registration shall be accomplished by completing and submitting the individual and/or business questionnaire, as appropriate.

(Ord. 2015-52. Passed 12-14-15.)

194.20 REQUEST FOR OPINION OF THE TAX ADMINISTRATOR.

(a) An "opinion of the Tax Administrator" means an opinion issued under this section with respect to prospective Municipal income tax liability. It does not include ordinary correspondence of the Tax Administrator.

(b) A taxpayer may submit a written request for an opinion of the Tax Administrator in accordance with the Rules and Regulations.

(c) A taxpayer is not relieved of tax liability for any activity or transaction related to a request for an opinion that contained any misrepresentation or omission of one or more material facts.

(d) A Tax Administrator may refuse to offer an opinion on any request received under this section. Such refusal is not subject to appeal.

(e) An opinion of the Tax Administrator binds the Tax Administrator only with respect to the taxpayer for whom the opinion was prepared and does not bind the Tax Administrator of any other municipal corporation.

(f) An opinion of the Tax Administrator issued under this section is not subject to appeal.

(Ord. 2015-52. Passed 12-14-15.)

194.21 BOARD OF TAX APPEALS.

(a) (1) The Board of Tax Appeals shall consist of three members. Two members shall be appointed by the legislative authority of Parma Heights, but such appointees may not be employees, elected officials, or contractors with Parma Heights at any time during their term or in the five years (which applies only to these two appointments) immediately preceding the date of appointment. One member shall be appointed by the Mayor of Parma Heights. This member may be an employee of Parma Heights, but may not be the Director of Finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(2) The term for members of the Board of Tax Appeals shall be two years. There is no limit on the number of terms that a member may serve if the member is reappointed by the legislative authority. The Board Member appointed by the Mayor of Parma Heights shall serve at the discretion of the administrative official.

(3) Members of the Board of Tax Appeals appointed by the legislative authority may be removed by the legislative authority by majority vote for malfeasance, misfeasance, or nonfeasance in office. To remove such a member, the legislative authority must give the member a copy of the charges against the member and afford the member an opportunity to be publicly heard in person or by counsel in the member's own defense upon not less than ten days' notice. The decision by the legislative authority on the charges is final and not appealable.

(4) A member of the Board of Tax Appeals who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.

(5) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on

the Board of Tax Appeals shall impair the power and authority of the remaining members to exercise all the powers of the Board of Tax Appeals.

(6) If a member is temporarily unable to serve on the Board of Tax Appeals due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the Board of Tax Appeals in the member's place. The appointment of such an individual shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

(b) Whenever a Finance Director issues an assessment, the Finance Director shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment, and the address to which the appeal should be directed.

(c) Any person who has been issued an assessment may appeal the assessment to the Board of Tax Appeals by filing a request with the Board of Tax Appeals. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty days after the taxpayer receives the assessment.

(d) The Board of Tax Appeals shall schedule a hearing to be held within sixty days after receiving an appeal of an assessment under division (c) of this section, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board of Tax Appeals and may be represented by an attorney at law, certified public accountant, or other representative. The Board of Tax Appeals may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within 120 days after the first day of the hearing unless the parties agree otherwise.

(e) The Board of Tax Appeals may affirm, reverse, or modify the Finance Director assessment or any part of that assessment. The Board of Tax Appeals shall issue a final determination on the appeal within ninety days after the Board of Tax Appeals' final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen days after issuing the final determination. The taxpayer or the Finance Director may appeal the Board of Tax Appeals' final determination as provided in Ohio R.C. 5717.011.

(f) The Board of Tax Appeals created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Ohio R.C. 149.43. Hearings requested by a taxpayer before a Board of Tax Appeals created pursuant to this section are not meetings of a public body subject to Ohio R.C. 121.22.

(g) The Board of Tax Appeals shall have the authority to approve or deny rules and regulations that the Tax Administrator wishes to adopt.

(Ord. 2015-52. Passed 12-14-15.)

194.22 AUTHORITY TO CREATE RULES AND REGULATIONS.

(a) Nothing in this chapter prohibits the legislative authority of Parma Heights, or a Tax Administrator pursuant to authority granted to the Tax Administrator by resolution or chapter, to adopt rules and regulations to administer an income tax imposed by Parma Heights in accordance with this chapter. Such rules and regulations shall not conflict with or be inconsistent with any provision of this chapter. Taxpayers are hereby required to comply not only with the requirements of this chapter, but also to comply with the rules and regulations.

(b) All rules and regulations adopted under this section shall be published and posted on the internet.

(Ord. 2015-52. Passed 12-14-15.)

194.23 RENTAL AND LEASED PROPERTY.

(a) All owners of rental or leased property, who rent to tenants, shall file with the Tax Administrator a report showing the name and address of each tenant who occupies such premises within Parma Heights as of January 1, 2005.

(b) Within thirty days after a new tenant occupies rental property of any kind within Parma Heights, all owners of rental or leased property who rent to tenants shall file with the Tax Administrator a report showing the name and address of each tenant who occupies such rental premises within Parma Heights.

(c) Within thirty days after a tenant vacates a rental or leased property located within Parma Heights, the owner of such vacated rental or leased property shall file with the Tax Administrator a report showing the date of vacation from the rental or leased property and the forwarding address of such vacating tenant.

(d) Property owners having twelve or more rental or leased units may, in lieu of divisions (b) and (c) of this section, comply with the intent of this section by filing with the Tax Administrator on a monthly or quarterly basis, as the Tax Administrator may prescribe by rule or regulation, a complete list of new tenants' names and addresses and a complete list of names and available forwarding addresses of tenants who vacate their units.

(e) For purposes of this section, "tenant" means:

(1) A person eighteen years of age or older known to be occupying rental or leased property;

(2) If there is a written lease or rental agreement, the person who signed the written lease or rental agreement with the owner; or

(3) If there is an oral lease or rental agreement, the person with whom the owner entered into the oral lease or rental agreement.

(Ord. 2015-52. Passed 12-14-15.)

194.24 SAVINGS CLAUSE.

This chapter shall not apply to any person, firm or corporation, or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. Any sentence, clause, section or part of this chapter or any tax against or exception granted any individual or any of the several groups of persons, or forms of income specified herein if found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, or part hereof, not been included therein.

(Ord. 2015-52. Passed 12-14-15.)

194.25 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of said taxes levied hereunder in the aforesaid periods are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Section 194.12 and Section 194.99 hereof.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Section 194.04 and Section 194.05 of this chapter as though the same were continuing.

(Ord. 2015-52. Passed 12-14-15.)

194.27 ELECTION TO BE SUBJECT TO R.C. 718.80 TO 718.95

(a) Parma Heights hereby adopts and incorporates herein by reference Sections 718.80 to 718.95 of the ORC for tax years beginning on or after January 1, 2018.

(b) A taxpayer, as defined in division (c) of this section, may elect to be subject to Sections 718.80 to 718.95 of the ORC in lieu of the provisions of this chapter.

(c) "Taxpayer" has the same meaning as in section 718.01 of the ORC, except that "taxpayer" does not include natural persons or entities subject to the tax imposed under Chapter 5745 of the ORC. "Taxpayer" may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.

194.99 VIOLATIONS; PENALTIES.

(a) Whoever violates Section 194.04, 194.16(a) or 194.17, by failing to remit Parma Heights income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for a term of up to six months, or both. If the individual that commits the violation is an employee, or official, of Parma Heights, the individual is subject to discharge from employment or dismissal from office.

(b) Any person who discloses information received from the Internal Revenue Service in violation of Section 194.16(a) shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than five thousand dollars (\$5,000) plus the costs of prosecution, or imprisonment for a term not exceeding five years, or both. If the individual that commits the violation is an employee, or official, of Parma Heights, the individual is subject to discharge from employment or dismissal from office.

(c) Each instance of access or disclosure in violation of Section 194.16(a) constitutes a separate offense.

(d) If not otherwise specified herein, no person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (2) File any incomplete or false return;
- (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;
- (4) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his books, records, papers and Federal and State income tax returns relating to the income or net profits of a taxpayer;
- (5) Fail to appear before the Tax Administrator and to produce his books, records, papers or Federal and State income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator;
- (6) Refuse to disclose to the Tax Administrator any information with respect to the income or net profits of a taxpayer;
- (7) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator authorized hereby;
- (8) Give to an employer false information as to his true name, correct Social Security number, and residence address, or fail to promptly notify an employer of any change in residence address and date thereof;
- (9) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

(e) Any person who violates any of the provisions in division (d) of this section shall be subject to the penalties provided for in division (a) of this section.

(Ord. 2015-52. Passed 12-14-15.)

ORDINANCE 2023 – 75

AN ORDINANCE TO ESTABLISH APPROPRIATIONS FOR THE CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF PARMA HEIGHTS, OHIO DURING THE PERIOD OF JANUARY 1, 2024 TO AND INCLUDING DECEMBER 31, 2024, AND DECLARING AN EMERGENCY, AS AMENDED

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. That to provide for the current expenses and other expenditures of the City of Parma Heights, Ohio, during the period of January 1, 2024 to and including December 31, 2024, the following sums set forth in the form identified as amended Exhibit “A”, attached hereto and made a part hereof by reference as if fully rewritten, are set aside and appropriated.

Section 2. That the Director of Finance is authorized to draw warrants from any of the foregoing appropriations upon receiving the proper requisition, certificate, and voucher therefore; approved by the officers authorized by law to approve same, or an Ordinance or Resolution to make the expenditure, provided that no warrants shall be drawn or paid for salaries or wages except to persons employed by authority of and in accordance with law and Ordinance.

Section 3. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of the Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 4. This Council declares this Ordinance to be an emergency measure for the immediate preservation of the public health, peace, and safety of this Municipality and for the further reason that said Ordinance must be enacted as soon as possible to authorize payment, and to maintain the full faith and credit of the Municipality; wherefore, it shall be in full force and effect immediately after its passage by Council and approved by the Mayor.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

APPROVED

FILED WITH
THE MAYOR: _____

MAYOR MARIE GALLO

ORDINANCE NO. 2023 - 81

AN ORDINANCE AUTHORIZING THE ADMINISTRATION TO ENTER INTO A CONTRACT WITH RICHARD L. BOWEN + ASSOCIATES, INC. TO SERVE AS CITY ENGINEER, AND PROVIDING FOR PAYMENT FOR SERVICES RENDERED THEREUNDER, AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. The employment of the firm of Richard L. Bowen + Associates, Inc., as appointed by the Mayor, is authorized, for the period beginning on January 1, 2024 and ending on December 31, 2025, to perform the services that may be required of said firm, as City Engineer, in accordance with the provisions of the Charter and Ordinances of the City of Parma Heights, and the contract between the City of Parma Heights and said Engineer, identified as Exhibit “A”, attached hereto, and made a part hereof as though fully rewritten.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3. This Ordinance is declared to be an emergency measure immediately necessary for the public peace, health, and safety of the Municipality, and for further reason that engineering services are necessary in the regular conduct of the City’s business; wherefore, this Ordinance shall be in full force and effect from and immediately after its passage by Council and approval by the Mayor.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

CLERK OF COUNCIL

APPROVED

FILED WITH
THE MAYOR: _____

MAYOR MARIE GALLO

EXHIBIT A

AGREEMENT

Between

CITY OF PARMA HEIGHTS, OHIO

&

RICHARD L. BOWEN + ASSOCIATES, INC.

For

CITY ENGINEERING SERVICES

THIS AGREEMENT made at Parma Heights, Ohio, effective _____, 2024 by and between the CITY OF PARMA HEIGHTS, 6281 Pearl Road Parma Heights, OH 44130 [hereinafter referred to as “CITY”], and RICHARD L. BOWEN + ASSOCIATES, INC., 2019 Center Street, Suite 500, Cleveland, Ohio, 44113 [hereinafter referred to as “CONSULTING ENGINEER”]; and PIETRO A. DiFRANCO, P.E. [hereinafter referred to as “CITY ENGINEER”]; and DAVID G. BRADT, P.E. [hereinafter referred to as “ASSISTANT CITY ENGINEER”].

WHEREAS, the CITY intends to employ a qualified Engineering and Architectural Consulting Firm authorized in the State of Ohio to perform professional engineering and architectural services necessary to meet the challenges and needs of the community through the coming years for and on behalf of the CITY as hereafter set forth; and

WHEREAS, the Mayor selected CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER as the persons and firm most qualified to perform the professional services required at a price that is fair and reasonable to the CITY;

WHEREAS, the Mayor desires said Agreement and terms thereof through December 31, 2025;

NOW THEREFORE, the CITY, CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER, each acknowledging the sufficiency of the consideration contained in the terms and conditions of the Agreement, agree as follows:

SECTION 1. BASIC SERVICES.

1.1 The SERVICES required to be performed by the CITY ENGINEER, ASSISTANT CITY ENGINEER, and the CONSULTING ENGINEER under this Agreement shall be the basic services provided to the CITY.

1.2 The CITY ENGINEER and ASSISTANT CITY ENGINEER shall receive a retaining fee in the sum shown in below per annum unless increased by Council.

	2024	2025
CITY ENGINEER	\$30,000.00	\$30,800.00
ASSISTANT CITY ENGINEER	\$15,000.00	\$15,400.00

The retaining fees shall be paid on a monthly basis commencing upon the effective date of this ordinance, and the amounts shall be subject to the contribution by the CITY and the CITY ENGINEER and ASSISTANT CITY ENGINEER, respectively, to OPERS for which they shall perform the following services:

- (a) Give advice to Council, the Mayor, residents, builders, etc. and other proper administrative officials on problems pertaining to engineering, zoning, building, etc.
- (b) Prepare formative or preliminary sketches, layouts, estimates or reports, concerning the advisability of proceeding with any public improvements contemplated by the Council.
- (c) Make recommendations regarding the engineering features of dedication plans, utility plans and such other requests of persons or firms as will require the use of the special knowledge possessed by the CITY ENGINEER and/or ASSISTANT CITY ENGINEER.
- (d) Review projects and prepare advisory reports for and, as necessary, attend regular City Council and Planning Commission meetings as needed and directed by the Mayor. The Mayor, in their sole discretion, shall determine when attendance at other meetings is needed.

- (e) Minor consultation and site inspection(s) with such authorized representatives of the City, providing such consultation requires no preparation of detailed plans, estimates or field investigations.
- (f) With respect to City projects, prior to performance of Additional Services and specifications for competitive bidding, perform such preliminary schematic design services and cost estimation so as to assist the Mayor and City officials with project planning and budgeting, including but not limited to review of site conditions.
- (g) Interpret and administer applicable laws, in consultation with city officials, in conjunction with development proposals, or compliance and enforcement thereof.
- (h) Provide assistance in the preparation of and filing of applications for Financial Assistance in the form of preliminary estimates of construction cost and minor engineering detail.
- (i) In providing the BASIC SERVICES set forth in paragraphs (a) through (h) above, CITY ENGINEER and/or ASSISTANT CITY ENGINEER shall be available and accessible to the Mayor an average of ten (10) hours per week, calculated over an extended period of time, and as set forth by a mutually agreed upon schedule. CITY ENGINEER and/or ASSISTANT CITY ENGINEER may be directed by the Mayor to keep office hours at City Hall, but are not required to be present at City Hall during the designated time, but shall insure that they are nonetheless at all times designated, available and accessible to the Mayor. When the CITY ENGINEER and ASSISTANT CITY ENGINEER are temporarily unavailable on such days to provide services due to illness, vacation or similar events, they may designate a qualified engineer in the CONSULTING ENGINEER'S office to temporarily provide such services.

Other than the retaining fee and OPERS contribution stated above, CITY ENGINEER and ASSISTANT CITY ENGINEER shall not receive any other wages or benefits from the CITY pursuant to this Agreement. All other fees and expenses are excluded from OPERS and are subject to the terms applicable to independent contractors.

SECTION 2. ADDITIONAL SERVICES.

2.1 The CONSULTING ENGINEER shall designate the CITY ENGINEER, ASSISTANT CITY ENGINEER, or another qualified engineer to furnish the following additional services to the CITY, if requested, according to the schedule or rates set forth in Paragraphs 2.2 and 2.3, and the authorizing procedures set forth in Section 4:

- (a) Prepare all necessary plans, profiles, specifications, and estimates of cost of every kind for public improvements including, but not limited to, minor roads and streets, off-street parking lots, retaining walls, sidewalks, and street resurfacing.

- (b) Serve as the authorized representative of the CITY and supervise the execution of public works undertaken by the CITY pursuant to plans and specifications approved by Council.
- (c) Furnish to the Council and/or any other CITY official plans, specifications and estimates of the costs of public improvements for the guidance of the Council and CITY Officials, and for the information and guidance of other persons dealing with the CITY.
- (d) Make and deliver to the Mayor and Council monthly reports of the progress of improvements under its charge which reports may be given orally at the City Council meetings.
- (e) The CONSULTING ENGINEER'S services shall be available to any department of the CITY or any official acting in his official capacity.
- (f) Assistance to the City in securing, tabulating and evaluating construction bids and furnishing an engineering assessment of the Contractor's capability to perform such public improvement.
- (g) Periodic visits to the site of the work by a duly qualified representative of the Engineer throughout the active construction periods for review of the progress and quality of the construction work to assure compliance with the specifications and to provide consultation with CITY representatives. The Engineer shall not be responsible for, nor have control of, construction means, methods, techniques, sequences; or for safety programs in connection with the work by the Contractor(s).

2.2 The CITY shall reimburse the CONSULTING ENGINEER for services rendered as follows:

- (a) For work done under Section 2.1 which involves public improvement project contracts to be awarded by the Board of Control, the compensation shall be in accordance with the following fee schedule:

<u>If the actual Cost of the Improvement Project is</u>	<u>Engineering Fee for Design of Improvement Project shall be</u>
\$ 0 to 100,000	12%
100,001 to 500,000	Base fee of 12% of the first \$100,000 plus 7.5% of the amount over \$100,000
500,001 to 1,000,000	Base fee of 8.4% of the first \$500,00 plus 6.8% of the amount over \$500,000
1,000,001 to 5,000,000	Base fee of 7.2% of the first \$1,000,000 plus 6.2% of the amount over \$1,000,000

The fees are payable as follows:

- (1) Seventy-five percent (75%) of the total fee shall be paid when contract plans, specifications and detailed estimates are completed and submitted to the CITY.
- (2) The remaining twenty-five percent (25%) of the total fee shall be payable in pro rata monthly payments in accordance with the estimated percentages of work completed by construction, until the aggregate of all payments shall equal the total remaining amount due under this Agreement as provided for in this Agreement.
- (3) That if any authorized work (covered by this Agreement) being performed by the CONSULTING ENGINEER shall be suspended, postponed, or abandoned prior to the completion and submission of the work to the CITY, the CONSULTING ENGINEER shall be reimbursed for services rendered on account of it, the payment shall be based as far as possible on the fee established in this Agreement or where the Agreement cannot be applied, then the basis shall be at the rate per diem. Payment for this work shall be within ninety (90) days of suspension, postponement or abandonment.
- (4) The fee provided in Section 2.2(a) hereof, shall cover all engineering services need for the improvement project, including preliminary estimates and reports, complete detailed plans and specifications, and preparation of monthly and final estimates for contractors' payments.

2.3 For engineering services not heretofore specified, the CONSULTING ENGINEER shall be compensated on a time spent basis as set forth in the schedule of hourly rates below, plus expenses, supplies and transportation.

(a) SCHEDULE OF HOURLY RATES

	2024	2025
City Engineer or Associate	\$ 104.00	\$ 106.00
Assistant City Engineer	\$ 104.00	\$ 106.00
Surveyor	\$ 82.00	\$ 84.00
Project Engineer	\$ 93.00	\$ 95.00
Draftsman	\$ 71.00	\$ 72.00
Designer	\$ 81.00	\$ 83.00
Construction Observation (City	\$ 61.00	\$ 63.00
Clerical/Administrative Assistant	\$ 42.00	\$ 43.00
Two Man Field Crew	\$ 127.00	\$ 129.00
Three Man Field Crew	\$ 181.00	\$ 183.00
Architect	\$ 155.00	\$ 157.00

- (b) The aforementioned Schedule of Rates in Section 2.3(a) shall cover the following services which the CONSULTING ENGINEER may provide:
- (1) Property, topographic, boundary, right-of-way, or grade surveys
 - (2) Line and grade stakes
 - (3) Resident Engineer
 - (4) Inspection of Construction
 - (5) Shop, mill or field inspection of materials
 - (6) Calculations of special assessments
 - (7) Cost of borings or other sub-surface explorations
 - (8) For special surveys, reports, etc., involving work not let by publicly bid contract for any and all duly authorized services not specified in Section 1 or 2, nor incident to nor in any way connected with the construction of public improvements.
- (c) Payment for services as heretofore set forth in Section 2.3 shall be made at the completion of each service and upon billing by the CONSULTING ENGINEER, setting forth the time, expense, supplies and transportation furnished.

SECTION 3. DOCUMENTS.

3.1 Plans and specifications, sketches, maps, drawings, linens, plats and similar finished documents prepared for the CITY and by the CITY ENGINEER, ASSISTANT CITY ENGINEER, or the CONSULTING ENGINEER, when completed, shall be deposited with the City, and shall be retained by the City as a record of the City of Parma Heights. The CITY shall have all property and proprietary rights with respect to such prepared documents.

SECTION 4. AUTHORIZATION FOR ADDITIONAL ENGINEERING WORK.

4.1 Engineering work other than that provided for in Section 1 shall not be undertaken by the CONSULTING ENGINEER unless specifically requested by the Mayor and authorized by purchase order approved by the Director of Finance or separate written contract signed by the Mayor and approved by the Director of Law and the Director of Finance. No other official shall authorize the CONSULTING ENGINEER to perform additional engineering services.

In the event of an emergency necessitating immediate additional services by the CONSULTING ENGINEER, services may be rendered pursuant to purchase order requested and approved by the Mayor and Director of Finance. The Mayor shall be the sole judge of whether a bona fide emergency exists.

SECTION 5. STATUS REPORT

5.1 On the first day of the month in which the term of this Agreement ends the CONSULTING ENGINEER shall provide a status report, in writing, of all work and projects then in process. A copy of such report shall be provided to the Mayor, and the Directors of Finance, and Law, and City Council.

SECTION 6. AUTOCAD

6.1 All sewers, water, sidewalks, and paving plans and plats shall be finalized by the CONSULTING ENGINEER in electronic format (AutoCAD) and shall be retained as hereinbefore provided, as a record of the City, with the City having all property and proprietary rights in such documents.

SECTION 7. TERM OF APPOINTMENT AND AGREEMENT

7.1 The term of the CONSULTING ENGINEER, CITY ENGINEER and ASSISTANT CITY ENGINEER and of this Agreement shall be for a twenty-four (24) month period commencing on January 1, 2024, and concluding on December 31, 2025. Beyond the aforementioned twenty-four (24) month period, this Agreement shall automatically continue under the conditions contained herein if the CITY and CONSULTING ENGINEER mutually do not discuss further terms.

7.2 It is further agreed that the CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER shall be permitted to conclude engineering services after the term of his appointment and its agreement has ended, for sewer, water, paving, and sidewalk projects previously authorized by the City Administration and/or Council during term through the design phase thereof, which includes plans, profiles, specifications and estimates of cost as provided in Sections 1 and 2 of this Agreement.

7.3 This Agreement is non-exclusive to the extent that nothing herein shall be construed to prevent the CITY from engaging other City Engineers for specific projects during the term of this Agreement.

SECTION 8. COST

8.1 In reference to the provision of this Contract between the CITY and the CONSULTING ENGINEER permitting the CITY ENGINEER and/or ASSISTANT CITY ENGINEER to contract for material and supplies at cost, upon the expense of the CITY, it is agreed that no materials and supplies shall be so authorized by CITY ENGINEER or ASSISTANT CITY ENGINEER, for no single project, at a cost of Five Hundred Dollars (\$500.00) or more, without prior authorization from the Mayor.

SECTION 9. ACCEPTANCE OF OTHER EMPLOYMENT

9.1 Neither the CITY ENGINEER, the ASSISTANT CITY ENGINEER, nor the CONSULTING ENGINEER shall, without the consent of Council, during the term of this Agreement, accept any employment from any firm or corporation engaged in the business of establishing subdivisions or erecting buildings, or under contract for any public improvement, within the City of Parma Heights. The CITY ENGINEER, the ASSISTANT CITY ENGINEER, and the CONSULTING ENGINEER have been advised to comply with ORC 102.02 concerning refraining from any private work on CITY improvement projects for certain time period as specified in the aforementioned statute.

SECTION 10. DISPUTES

10.1 Except as this agreement otherwise provides, all claims, counterclaims, disputes and other matters in question between the CITY and the CITY ENGINEER, the ASSISTANT CITY ENGINEER, and the CONSULTING ENGINEER out of or relating to this Agreement or the breach of it will be decided by mediation if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Ohio, County of Cuyahoga.

SECTION 11. TERMINATION OF AGREEMENT

11.1 It is expressly understood and agreed that either the CITY or CITY ENGINEER and the CONSULTING ENGINEER may terminate this Agreement at any time by giving 30 days advance written notice to the other party either personally to the representative of that party who signed this Agreement, or by registered mail, return receipt requested, addressed to the principal office of that party. The ASSISTANT CITY ENGINEER shall not have any right to terminate this Agreement.

11.2 In the event that this Agreement is terminated by either the CITY or the CITY ENGINEER and the CONSULTING ENGINEER, the CITY ENGINEER and the CONSULTING ENGINEER shall only be entitled to be compensated for any BASIC SERVICES, ADDITIONAL SERVICES, and/or Other Engineering Services, as defined above, performed to the date of termination performed. Such compensation shall be based on the provisions set forth herein, if possible. For any services rendered to which these provisions do not apply, payment shall be based upon a per diem rate for the actual time spent rendering the services, computed by using the average rate for such services rendered by other comparable firms in Cuyahoga County, Ohio.

11.3 The Engineer shall be permitted to complete all started projects and design work in process only upon authorization of the Mayor and City Council; all other services shall cease at the end of thirty (30) days. The Engineer shall return to the City all maps, drawings and other City Records.

SECTION 12. INSURANCE

12.1 The CITY ENGINEER and CONSULTING ENGINEER shall comply with all workers' compensation laws of the State of Ohio and shall carry at least the following minimum private insurance coverage:

- a. General Liability and Comprehensive Automobile Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00 aggregate) for injuries, including those resulting in death, to any personal, and property damage. Said insurance shall be maintained in full force and effect during the life of this Agreement and shall protect the CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER, their employees, agents,

and representatives from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from the negligent or wrongful acts, errors or omissions of the CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER, their employees, agents or representatives in the performance of the services under this Agreement.

- b. Valuable Papers insurance in an amount sufficient to assure the restoration of any drawings, project manual pages, field notes, or similar data relating to the work under this Agreement, in the event of their loss or destruction, during the life of this Agreement.
- c. Professional Liability Insurance in an amount \$1,000,000.00 aggregate shall be carried by the CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER to provide coverage for any errors, omissions or negligence by CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER, and their employees, agents, and representatives.

12.2 Certificates showing the CITY ENGINEER and CONSULTING ENGINEER are carrying all of the above described insurances in at least the above specified minimum amounts shall be furnished to the City Finance Director before the CITY is obligated to make any payment to the CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER for any services rendered by them under this Agreement. Such certificates for all such required insurances shall name the CITY as an additional insured party, except for professional liability insurance and workers' compensation, and shall provide for advance written notice to the CITY of not less than thirty (30) days prior to the effective date of any modification or cancellation of any such coverage.

SECTION 13. INDEMNIFICATION

13.1 The CONSULTING ENGINEER hereby agrees to indemnify and hold the CITY harmless from and against any and all losses, damages, settlements, costs, charges, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character arising out of the acts, omissions and/or negligence of the CONSULTING

ENGINEER'S employees, subcontractors, materialmen, agents or others acting in concert with the CONSULTING ENGINEER.

SECTION 14. MISCELLANEOUS

14.1 Nothing contained in this Agreement shall be construed as creating any personal liability on the part of any employee or official of the CITY.

14.2 No assignment by a party hereto of any rights, obligations, or interests in this Agreement shall be permitted without the prior written consent of the other party; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

14.3 CITY and CITY ENGINEER, ASSISTANT CITY ENGINEER, and CONSULTING ENGINEER each binds itself, its partners, successors, assigns and legal representatives to all of the covenants, agreements and obligations contained in the Agreement.

14.4 If any provision of this Agreement or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable. In lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid, and unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 The interpretation, construction and enforcement of the provisions of this Agreement shall be made in strict conformance with the laws of the State of Ohio and the ordinances of the City of Parma Heights.

14.6 This Agreement shall be construed to inure to the benefit of, and be binding upon, all of the parties, and their respective successors in interest and assigns.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year, and at the place, above first written.

CITY:
CITY OF PARMA HEIGHTS, OHIO

CITY ENGINEER:
PIETRO A. DiFRANCO, P.E.

Mayor Marie Gallo

Pietro A. DiFranco, P.E.

Date

Date

ASSISTANT CITY ENGINEER

David G. Bradt, P.E.

Date

Approved as to Legal Form:

CONSULTING ENGINEER
RICHARD L. BOWEN +
ASSOCIATES, INC.

Mark A. Schneider, Director of Law

(By) _____ (its) _____

Date

Date

RESOLUTION NO. 2023 - 83

A RESOLUTION AUTHORIZING THE ADMINISTRATION TO ENTER INTO AN AGREEMENT FOR THE MANAGEMENT OF THE CASSIDY THEATRE WITH CASSIDY THEATRE, INC. AN OHIO NOT FOR PROFIT CORPORATION, AND DECLARING AN EMERGENCY

WHEREAS, the City of Parma Heights entered into an Agreement with Cassidy Theatre, Inc. for the management of the Cassidy Theatre through December 31, 2023; and

WHEREAS, the City has reached terms of a new Agreement for the management of the Cassidy Theatre; and

WHEREAS, the City and Cassidy Theatre, Inc. are desirous to continue their relationship and enter into a new Agreement for the management of the Cassidy Theatre in order to provide for revised terms and conditions.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. In accordance with the Charter and Ordinances of the City of Parma Heights, the Administration is authorized and directed to enter into an Agreement between the City of Parma Heights and Cassidy Theatre, Inc., an Ohio Not for Profit Corporation, for the management of the Cassidy Theatre, in the form attached hereto as “Exhibit A” and made a part hereof by reference, as if fully rewritten.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3. This Resolution is declared to be an emergency measure immediately necessary for the public peace, health, and safety of the Municipality, and for further reason that it is necessary to avoid a disruption in the management of the Cassidy Theatre; wherefore, this Resolution shall be in full force and effect from and immediately after its passage by Council and approval by the Mayor.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

APPROVED

FILED WITH
THE MAYOR: _____

MAYOR MARIE GALLO

EXHIBIT A

**AGREEMENT
BETWEEN
THE CITY OF PARMA HEIGHTS
AND THE
CASSIDY THEATRE, INC.
FOR THE
MANAGEMENT
OF
THE CASSIDY THEATRE**

THIS AGREEMENT ("Agreement") entered into between the CITY OF PARMA HEIGHTS, a Municipal Corporation ("City") and THE CASSIDY THEATRE INC., an Ohio Not for Profit Corporation ("Manager"), this _____ day of _____, 2023.

WHEREAS, the City and Manager desire to enter into a Management Agreement for the period beginning on January 1, 2024 and ending on December 31, 2024; and

WHEREAS, the City is desirous of promoting the use of its building formerly operated by the City as the Theatre ("Facility"); and

WHEREAS, the City is desirous of providing a theatre experience, educational programs, arts opportunities and rental opportunities for persons desiring to rent the community rooms in the facility.

NOW, THEREFORE, IT IS AGREED between the City and the Manager that the Agreement for Management of the Cassidy Theatre be entered into upon the following terms and conditions.

Section 1. FACILITY. Upon and subject to the terms and conditions of Agreement, City hereby grants to Manager the use of the facility located at 6200 Pearl Road, Parma Heights, Ohio formerly operated by the City as the Cassidy Theatre located in the Greenbrier Commons located in Parma Heights, Ohio. Manager hereby accepts the facility in its present, "AS IS" condition.

(a) Theatre Name. The name of the Theatre is to remain Cassidy Theatre.

(b) Definition. The Facility shall be defined as the Theatre Lobby, Theatre Offices, and Theatre Costume Area. The Facility shall not include Rooms A or B.

(c) General Use. Either party is responsible for damage to the Facility that is due to their respective use of the Facility.

Section 2. USE BY MANAGER. Manager shall use the Facility for the operation of a community theatre, as recited in the preambles to this Agreement. Manager shall operate and maintain the facility in a neat, clean, safe, and healthy condition according to City Ordinances and direction of the proper public officers. The Manager will be responsible for the following:

- a. The production expenses for all theatrical shows.
- b. All staff are to be the exclusive employees of the Manager.
- c. The Manager may propose to sublease the facilities, subject to the prior written approval of the City, after providing all lease agreements to the Law Department at least fourteen (14) business days prior to the event. The lease shall be approved by the City prior to the event and shall contain provisions for security, traffic control, if necessary, liability insurance and a release and hold harmless clause signed in favor of the City.
- d. The Manager shall submit a proposed list of shows, dates, camps, and pre-arranged events to the Mayor for the following year by September 15th for approval prior to finalizing a season schedule by October 15th.
- e. The Manager may have the use of Rooms A and B by giving reasonable notice to the City whilst the City does not have plans for Rooms A and B on the requested date(s), subject to approval by the City. The Manager will provide the maintenance personnel when it uses Rooms A and/or B. In such a circumstance, the Manager shall be responsible for cleaning and restocking the restrooms, sweeping floors, returning tables and chairs to storage locations as they were found, and removal of garbage from the Facility.
- f. The Manager shall have use of the adjacent kitchen facility and costume shop.
- g. The Manager may, subject to written permission from the City, permit liquor, whether spirituous, vinic or fermented, to be sold on said premises. The City may provide written consent after a timely request, a demonstration of appropriate insurance, a demonstration of appropriate indemnification of the City, and appropriate licensure from the State of Ohio, Department of Liquor Control, maintained at the Manager's expense. (See Section 961.01 of the Codified Ordinances, attached).
- h. The Manager shall have access to Room B during the month of July, for the purpose of staging a theatre camp. The theatre camp shall not hinder the City's ability to host its own summer camp or weekend events.
- i. The Manager may petition the City for permission to stage outdoor productions on City grounds subject to the City's written consent.
- j. The Manager shall maintain appropriate licensure by the Cuyahoga County Board of Health for any food concessions at the Manager's expense.

Section 3. USE BY CITY. The City shall have the use of Rooms A and B, and the adjacent kitchen, and reserves the right to rent and permit the use of Rooms A and B to outside parties.

- a. The City reserves use of the facility for official City events on an as needed basis, on dates to be determined, with reasonable notice to the Manager. Reasonable notice shall be at least two (2) weeks in advance of any event planned for the facility.
- b. There shall be no charge to the City for its use of the facility.
- c. The City will provide the maintenance personnel when it uses the facility.

Section 4. TERM. This Agreement shall be from January 1, 2024 to December 31, 2024. The City and Manager shall have the option to extend the Agreement beyond the expiration date. Should the parties mutually elect to extend the Agreement, they shall confirm in writing to extend for a fixed period of time. Either the City or Manager shall have the right to terminate this agreement upon thirty

(30) days prior written notice.

Section 5. FEES. Fees of \$1,000.00 (One Thousand Dollars) shall be payable for each month of the Term of this Agreement. Each installment payment shall be due in advance on the first day of each calendar month during the lease term, subject to the terms of Section 18(i). All fees, and all other payments due to the City under this Agreement, shall be made to the City at 6281 Pearl Road, Parma Heights, Ohio 44130 or at such other address as the City may designate.

The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.

Section 6. TAXES. During the Term hereof; Manager shall, be responsible for all personal property taxes and real estate taxes directly attributable to Manager's use. Manager shall have the right to contest all taxes, assessments, charges and impositions, and City agrees to join in such contest, if required by law, and to permit the Manager to proceed with the contest in City's name, provided the expense of the contest is borne by the Manager.

Section 7. REVENUES. All revenues ("Revenues") generated from the operation of the Theatre from events conducted by the Manager shall be and remains the sole property of the Manager.

Revenues generated from events conducted by the City shall be retained by the City.

If Manager and City agree in writing prior to the date of an event conducted by the City, then participation fees may be paid to the Manager based upon the involvement of the Manager in the event. If there is no agreement, in writing, then the City shall retain said revenues.

Section 8. MAINTENANCE AND REPAIRS. The Manager shall, at its sole cost and expense, maintain and repair the interior of the facility, including the lobby, stage, theatre seating area, office area, restrooms, and dressing rooms.

The Manager shall provide evidence of maintenance and repairs to the Director of Public Service on or before the 1st day of each month of this Agreement.

In the event that the City must assume the duties of the Manager in whole or in part to maintain and repair any portion of the interior of the Facility, the Manager shall be assessed the cost of such maintenance and repair at a rate of \$48.64 per hour. The minimum charge for such a circumstance shall be four (4) hours per occurrence for each participating employee of the City.

The Manager and the Director of Public Service shall meet prior to the beginning of the lease term to inspect the facility and establish a procedure for maintenance and repair.

The City shall maintain and repair mechanical (including HVAC), plumbing, and electrical systems, and maintain the roof.

A) SUBCONTRACTOR'S INSURANCE. Manager shall require that all subcontractors

brought onto the property have insurance coverage at the subcontractor's expense, or be listed as insured on the Manager's insurance policy (as documented in a Certificate of Insurance if requested) in the following minimum amounts:

- a) Workers' compensation - statutory amount
- b) Employer's liability
- c) Comprehensive general liability
 - 1. \$100,000 bodily injury per person - \$300,000 per occurrence
 - 2. \$100,000 property damage

Higher amounts may be required if the work to be performed is sufficiently hazardous. The Manager shall obtain and keep on file a certificate of insurance which shows that the subcontractor is so insured. In addition, where required by law, subcontractors must obtain building permits from the City.

Section 9. **FIXTURES AND ALTERATIONS.**

A) INSTALLATION BY MANAGER. The Manager and Director of Public Service shall meet within two (2) weeks of the execution of the Agreement to inventory the installation(s) made by the Manager during the Term of the prior Agreement between the parties. The Manager is prohibited from affixing any item, including signage, to any surface of the Theatre Lobby, whether by adhesive, nail, tack, or any other means.

The Manager shall throughout the Term of the Agreement, at its own expense, maintain and clean the Facility and all improvements thereon and shall deliver up the Facility in a clean and sanitary condition at the expiration or termination of this Agreement or the termination of the Manager's right to occupy the facility, in a good repair and condition, reasonable wear and tear excepted. Upon the expiration or termination of this Agreement or the termination or the termination of Manager's right to occupy the leased premises, Manager shall surrender all keys for the facility to the City at the place then fixed for the payment of rent and City shall have the right to reenter and resume possession of the Facility. No act done by Manager or any of Manager's agents (hereinafter defined) during the term of the lease shall be deemed an acceptance of a surrender of Facility, and no agreement to accept a surrender of Facility shall be valid unless the same be made in writing and executed by Manager.

B) REMOVAL BY MANAGER. Upon the expiration or earlier termination of this Agreement, the Manager shall remove all trade fixtures and other equipment owned by the Manager and located within Facility, in which event Manager shall repair damage to Facility caused by such removal. The City may, failing removal by the Manager, at Manager's expense, perform such removal.

Section 10. **LIENS.** Manager shall have no ownership rights in the facility and shall not suffer or permit any mechanic's lien or other lien to attach to the Facility or any building or improvement thereon in connection with any work performed by Manager, its agents or contractors, and whenever and as often as any such lien or liens shall be filed or shall attach. Manager shall, within thirty (30) days thereafter, pay such lien or liens or procure their removal

from the Facility.

Section 11. **REPRESENTATION.** Manager represents and warrants to the City that it is an independent contractor and is not an employee of the City and none of its employees, if there be any, shall be employees of the City but shall, at all times, be the sole and exclusive employees of Manager. Manager agrees to indemnify and make the City whole in the event that there are claims made by its employees against the City.

Section 12. **ADDITIONAL INSURANCE.** Manager must furnish a certificate evidencing workers' compensation.

Section 13. **GENERAL INDEMNIFICATION.** Manager hereby indemnifies and agrees to defend and hold City and its employees, agents, and contractors harmless from and against any and all loss, cost, damage, claim or expense, including attorney fees, caused by Manager or any person or party for whom Manager is legally responsible.

Section 14. **INSURANCE.**

- A) **PROPERTY INSURANCE.** City shall obtain and keep in force during the Term, at City's cost and expense, commercial property insurance covering loss or damage to Facility in an amount not less than the replacement value thereof, as the same may be increased from time to time, and providing protection against all perils covered under a standard "special for" or "all risk" policy of commercial property insurance.
- B) **LIABILITY INSURANCE.** Manager shall obtain and keep in force, at its sole cost and expense, commercial general liability insurance insuring against any and all claims for damages resulting from injury or death to persons or injury to property occurring in and about the Facility and arising out of Manager's negligent acts or omissions in connection with its use or occupancy of the Facility, or the negligent acts or omissions of any person using the Facility in connection with Manager's business. The amount of liability coverage shall be not less than \$2,000,000.00 per occurrence and \$2,000,000.00 general aggregate for property damage and injury or death to persons. The City shall be named as an additional insured on said policy of insurance.

Manager is solely responsible for obtaining insurance at its sole expense to cover its personal property.

- C) **CERTIFICATES.** Manager shall deliver to City certificates evidencing the existence and amount of the insurance required above. The Manager shall obtain a Certificate of Additional Insurance from its Insurer, which Certificate shall name the City as an Additional Insured by the Manager's Insurance Carrier. The Manager shall present the Certificate to the City, with a copy to the Law and Finance Departments.

Section 15. **FIRE OR OTHER CASUALTY.** If at any time during the Term of this Agreement or any improvements now or hereafter erected on the Facility shall be destroyed or damaged by fire or any other insured casualty, then, subject to and conditioned upon the amount of

insurance proceeds recovered by City, City shall repair, reconstruct and restore the Facility. If the Facility, or any substantial part thereof, are damaged or destroyed to such an extent that it is impractical to repair or restore the Facility to the approximate condition it was in prior to being damaged within one hundred eighty (180) days of the date of the damage or destruction, City shall have the right to terminate this Agreement upon notice to Manager. The fees shall abate during any period of restoration.

Section 16. CONDEMNATION.

A) **ENTIRE TAKING.** If the Facility shall be taken, appropriated or condemned for any public or quasi-public use or purpose, then this Agreement shall automatically cease and terminate as of the date Manager must relinquish possession of the Facility or when title to the Facility vests in the taking authority, whichever occurs latest, and all fees and other charges paid under this Agreement shall be apportioned as of the date of termination. The City will advise the Manager of any plan to appropriate or condemn the property as soon as such information becomes available to the City.

B) **PARTIAL TAKING.** If less than all of the Facility shall be taken, appropriated or condemned for any public or quasi-public use or purpose, and the remaining portion not so taken is, in the opinion of Manager, sufficient for the operation of Manager's business as it is then being conducted, Manager shall continue to use the portion not so taken and there shall be an equitable and proportionate reduction in the fees hereunder.

Section 17. DEFAULT. Manager shall be in default hereunder if any one or more of the following events (hereinafter referred to individually as an "Event of Default") shall occur (i) Manager shall fail to pay any monthly installment of fees or any other amounts or charges payable by Manager under this Agreement and such failure shall continue for more than five (5) days after the date such payment was due, (ii) Manager shall neglect or fail to perform or observe any of the other terms, covenants or conditions contained in the Agreement and such failure shall continue for more than thirty (30) days after City's notice to Manager of such failure (or such longer period that is reasonable if the obligation is incapable of cure within such 30-day period and Manager has commenced such cure and diligently prosecutes the same to completion). (iii) Manager shall become bankrupt or insolvent or make a general assignment for the benefit of creditors, (iv) Manager's business and use hereunder shall be taken upon an execution, attachment or other process of laws, or (v) a receiver or trustee shall be appointed to take charge of all or any substantial part of City's property and such appointment shall not be vacated or otherwise nullified within ninety (90) days thereafter. Upon the occurrence of an Event of Default and while such Event of Default continues, City shall have the right, at its option, to terminate this Agreement upon specified date not less than fifteen (15) days after the date of the notice of termination and this Agreement shall then automatically expire on the date so specified unless Manager's default is cured or waived prior thereto.

Section 18. COMPLIANCE WITH LAW. Manager shall comply with all governmental laws, ordinances, rules, regulations, orders or other requirements of all governmental bodies having jurisdiction over the Facility and/or Manager's business at the Facility.

Section 19. ASSIGNMENT. Manager shall have no right to assign this Agreement, or any part thereof, without the express prior written consent of the City.

Section 20. **RIGHT TO ENTER THE FACILITY.** City and its agents shall have the right to enter the Facility at any time to examine it.

Section 21. **SURRENDER OF THE FACILITY.** At the expiration of the term, or upon any earlier termination of this Agreement for any reason, Manager shall surrender the Facility in broom-clean condition and in good condition and repair. In the event that the Manager should hold over and fail to surrender, for any reason, the City may exercise self-help to assert possession of the Facilities, change the locks, if necessary, take such further action, as necessary, to secure and control the Facilities. In the event that the Manager or its personnel remain on or refuse to surrender and vacate the Facilities, the City may proceed against them in Trespass. In the event that legal action is necessary or appropriate, the Manager shall be responsible for damages and costs, including attorney fees, should the City prevail in such action.

Section 22. **WAIVER.** The waiver by either party of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant, or condition of this Agreement. City's acceptance of fees and charges and other amounts hereunder shall not deem to be a waiver of any preceding breach by Manager of any term, covenant or condition of this Agreement. No term, covenant, or condition of this Agreement shall be deemed to have been waived by a party hereto unless such waiver is in writing signed by such party.

Section 23. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties in regard to the Facility. There are no oral agreements existing between the parties hereto.

Section 24. **MODIFICATION OF AGREEMENT.** This Agreement shall not be modified except in writing signed by both the Manager and the City.

Section 25. **GOVERNING LAW; SEVERABILITY.** This Agreement and its performance shall be governed, interpreted and regulated by and in accordance with the laws of the State of Ohio. If any portion of this Agreement should be invalid or held invalid, the remainder of it shall be unaffected and remain in full force and effect.

Section 26. **NOTICE.** Any notice, demand, or request required to be given by City or Manager under this Agreement shall be in writing signed by the party giving it, and sent by certified mail, return receipt requested, to the party to be notified as follows:

TO CITY:
City of Parma Heights
Attention: MAYOR MARIE GALLO
6281 Pearl Road
Parma Heights, Ohio 44130

TO MANAGER:
The Cassidy Theatre, Inc.
Attention: MICHAEL CARAFFI, President

6200 Pearl Road
Parma Heights, Ohio 44130

Or such other address as City or Manager, respectively, may designate by such a notice. Service shall be complete upon three (3) business days after mailing as set forth above, except in the case of a notice to change an address in which case service shall be complete when notice is received by the addressee. Notice sent by any means other than certified mail, return receipt requested, shall be deemed delivered when such notice is received by the addressee.

Section 27. SUCCESSORS. The provisions of this Agreement shall apply to and be binding upon the successors and assigns of both Manager and City.

Section 28. SURVIVABILITY. The terms, conditions, agreements and indemnifications contained in the Agreement shall survive the expiration of this Agreement or of any extension(s) of it.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 20____.

FOR THE CITY OF PARMA HEIGHTS:

MARIE GALLO
Mayor

Date: _____

FOR THE CASSIDY THEATRE INC.:

MICHAEL CARAFFI
President

Date: _____

ORDINANCE NO. 2023 - 84

AN ORDINANCE ESTABLISHING A SCHOOL ZONE ON YORK ROAD AT VALLEY FORGE HIGH SCHOOL, AND DECLARING AN EMERGENCY

WHEREAS, the Parma Heights Codified Ordinances and Ohio law allow a process for the establishment of a school zone; and

WHEREAS, the Chief of Police recommends the establishment of a school zone on York Road at Valley Forge High School as a matter of public safety; and

WHEREAS, the Municipal Engineer has furnished the parameters for the school zone as indicated in Exhibit “A”, attached hereto and incorporated by reference; and

WHEREAS, it is the intent of the Administration and City Council that York Road at Valley Forge High School be designated a school zone during school operating hours.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga, and State of Ohio:

Section 1: That Council hereby establishes a school zone on York Road at Valley Forge High School, as indicated in Exhibit “A”, which is attached hereto and incorporated by reference.

Section 2: The Council hereby formally petitions, requests, and directs all necessary parties, including, but not limited to, the Director of Public Safety, the Chief of Police, the Director of Public Service, the Municipal Engineer, the Ohio Director of Transportation, the Cuyahoga County Administration, and the City Administration, to take all necessary actions to establish, maintain, and formalize a school zone on York Road at Valley Forge High School as indicated in Exhibit “A”, which is attached hereto and incorporated by reference.

Section 3: This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 4: This Ordinance is declared to be an emergency measure necessary for the public peace, health, and safety of the Municipality, and for the further reason it is necessary for the City to avoid any disruption to public safety; wherefore, this Ordinance shall be in full force and effect immediately upon its passage by Council and approval by the Mayor.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

CLERK OF COUNCIL

APPROVED

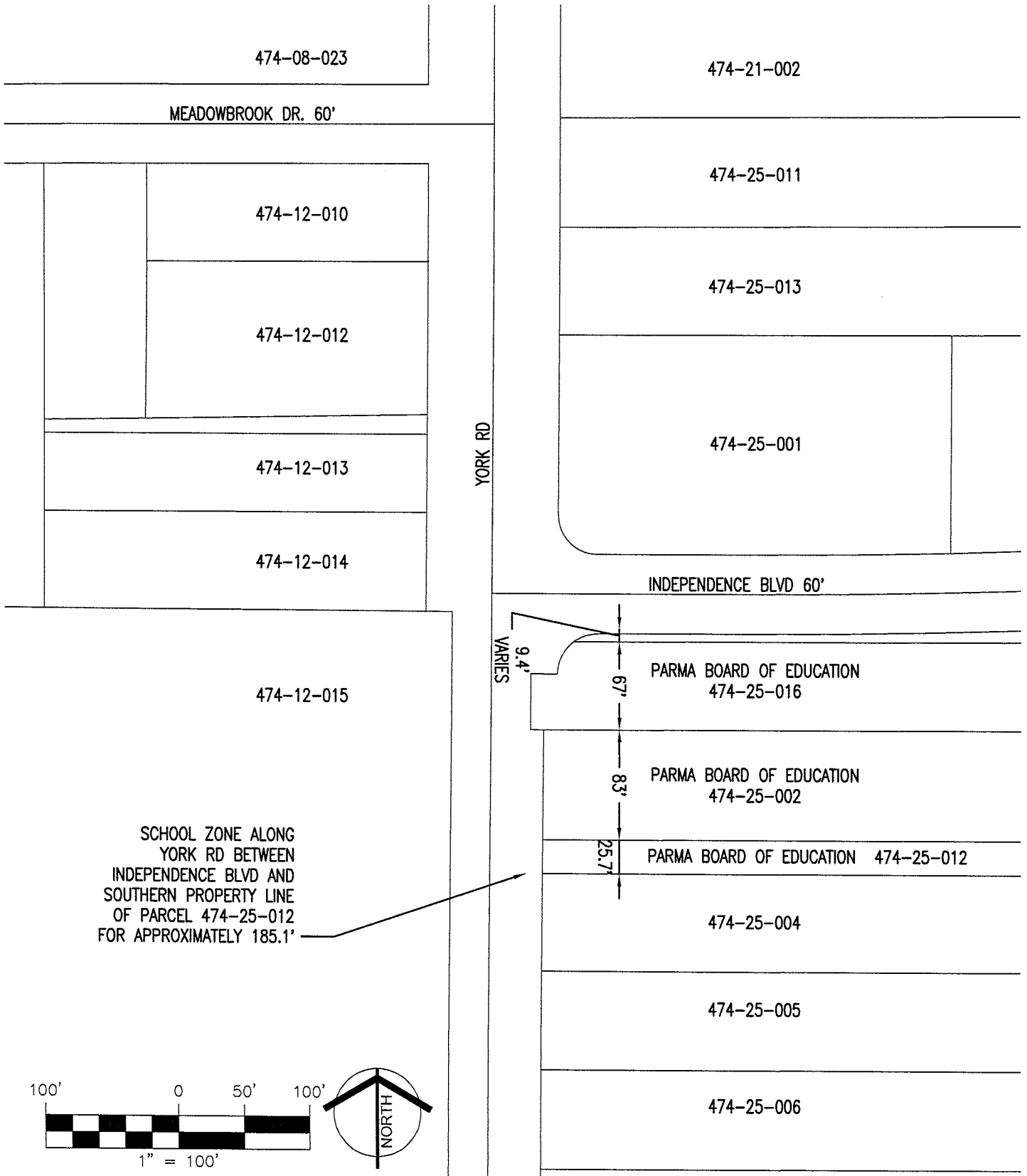
FILED WITH
THE MAYOR: _____

MAYOR MARIE GALLO

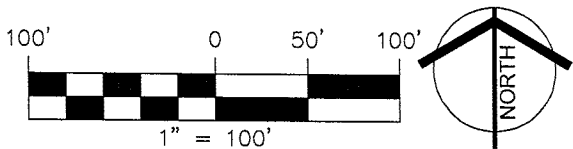
EXHIBIT A

SCHOOL ZONE

STATE OF OHIO, COUNTY OF CUYAHOGA, CITY OF PARMA HEIGHTS
NOVEMBER 2023



SCHOOL ZONE ALONG
YORK RD BETWEEN
INDEPENDENCE BLVD AND
SOUTHERN PROPERTY LINE
OF PARCEL 474-25-012
FOR APPROXIMATELY 185.1'



RESOLUTION NO. 2023 - 85

A RESOLUTION AUTHORIZING THE ADMINISTRATION TO ENTER INTO AN AGREEMENT WITH THE CITY OF NORTH ROYALTON TO PROVIDE FOR PRISONER HOUSING SERVICES, AND DECLARING AN EMERGENCY

WHEREAS, the Police Chief, the Director of Public Safety, and the Director of Law have reviewed and recommend that Council authorize an annual Agreement with the City of North Royalton to provide for prisoner housing and jail services to the City of Parma Heights, reserving space at a fixed annual fee.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1: The Administration is authorized to enter into an Agreement with the City of North Royalton in the form of Exhibit "A" attached hereto and incorporated herein as though fully rewritten.

Section 2: This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3: This Resolution is declared to be an emergency measure necessary for the public peace, health, and safety of the Municipality, and for further reason that this Agreement is necessary for the immediate housing of prisoners; wherefore, it shall be in full force and effect immediately after its passage by Council and approval by the Mayor.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

APPROVED

FILED WITH
THE MAYOR: _____

MAYOR MARIE GALLO

EXHIBIT A

ANNUAL LEASE AGREEMENT FOR JAIL HOUSING AND ANCILLARY SERVICES

This is a lease agreement between the City of North Royalton, Ohio, Lessor, hereinafter "Royalton", and the City of Parma Heights, Ohio, hereinafter Lessee, for the extension of jail housing and ancillary services on an annual basis.

Whereas: Royalton, as a political subdivision of the State of Ohio, owns and operates a "full-service jail" as defined by the state and is authorized to retain prisoners, male and female, for indefinite terms of incarceration; and

Whereas: Royalton offers to lease a limited number of jail cell beds on an exclusive basis to other governmental subdivisions and/or law enforcement agencies for fixed terms under specific conditions set forth below; and

Whereas: Lessee seeks to lease one jail cell bed on an exclusive basis for its own purposes.

Now therefore the parties agree as follows:

- 1) Royalton agrees to lease to Lessee and Lessee agrees to lease from Royalton one jail cell bed in the North Royalton Municipal Jail for Lessee's exclusive use at all times during the term of the lease;
- 2) The term of this lease shall be for one (1) year from January 1, 2023~~4~~ at 12:00AM through December 31, 2023~~4~~ at 11:59PM; any lease that commences after January 1 shall also terminate on December 31 but shall pay prorated rent based upon its commencement date.
- 3) This lease shall renew automatically from year to year unless terminated as provided hereafter;
- 4) In consideration for this lease Lessee shall pay to Royalton the annual RENTAL sum of ~~Sixty-Three Thousand Eight Hundred and Seventy Five Dollars (\$63,875.00)~~ Seventy Three Thousand Dollars (\$73,000.00) PER BED, payable quarterly, in four equal installments in advance on the first day of each quarter of the year without demand or invoice;
- 5) Royalton reserves the right to select the specific cell bed(s) to be assigned for Lessee's use which may and will change from day to day as may be determined by Royalton to conform to the efficient operation of the jail within the sole discretion of Royalton; any part or portion of a day constitutes a full day for billing purposes;
- 6) Royalton will provide all standard jail housing services customarily afforded by municipal jails including regular meals, exercise, 24/7/365 oversight;
- 7) Royalton will provide Lessee's prisoners with limited medical services consistent with similar services to those which it provides to and for its own prisoners; all costs and fees attributable to such limited medical services provided to Lessee's prisoners shall be billed separately to Lessee, as incurred, which shall be reimbursed to Royalton within thirty (30) days of invoice;
- 8) For all emergency medical services and/or other medical services that exceed those commonly afforded by Royalton, Royalton will use the North Royalton Fire Department emergency medical services and the same for transport to medical facilities; all such services and transport and additional facility charges and fees shall be the sole responsibility of Lessee;

NOTWITHSTANDING any Ohio Attorney General Opinion to the contrary AND by the negotiated terms of this agreement all hospital, medical, dental and related similar expenses incurred for the individual prisoner shall be wholly the responsibility of the lessee.

- 9) Lessee will be given reasonable notice, as soon as possible, of any circumstances requiring medical treatment described in paragraphs 7 and/or 8;
- 10) Royalton will provide all required booking and processing of prisoners in accord with the then current North Royalton Jail Policy Manual; Royalton will provide in-house video arraignment service to the Municipal Court subject to the technical limitations of the service and equipment and the availability of necessary staff support;
- 11) All prisoner transport that may be required for any reason (except as noted in paragraph 7 above) is the sole responsibility of Lessee;
- 12) Lessee shall, upon delivery of a prisoner, provide Royalton all necessary information to complete the forms for incarceration including all known medical conditions and/or concerns;
- 13) Royalton reserves the right to decline to accept any prisoner if in Royalton's sole discretion that individual is unable to be safely housed or if that individual presents a danger to himself/herself or others; for any prisoner determined by Royalton to need "administrative segregation" the daily rate will be double the standard rate under the terms of this agreement (~~\$350~~ \$400 per day for lessees with annual exclusive agreements or ~~\$400~~ \$460 per day for lessees with non-exclusive per diem styled agreements);
- 14) Royalton agrees to offer Lessees with exclusive agreements a limited preferred priority for the housing of additional prisoners in excess of the one housed pursuant to the terms of this lease for such convenience as that may offer to Lessee at the then current daily rate for exclusive cell bed availability (~~\$175.00~~ \$200.00 per day);
- 15) Royalton will conduct a review to determine the lease rate for the coming year and communicate that rate to the lessee on or about October 15th of each lease year in order to allow for Lessee to properly budget;
- 16) Either party may terminate this lease by sending written notice thereof to the other party on or before November 30th of the current lease year;
- 17) Royalton will make every reasonable effort to fulfill its commitments however, notwithstanding any other provision herein, Royalton reserves the right during any declared emergency or unforeseen calamity to temporarily suspend this lease in order to respond to the then-prevailing conditions;
- 18) Both parties shall maintain Comprehensive General Liability policies of insurance with minimum limits of \$1,000,000 per claim and \$2,000,000 in the aggregate that address coverage of risks arising from the performance of public safety activities herein and both parties shall obtain a specific Certificates of Insurance naming the other party as an Additional insured. Both parties shall also maintain Law Enforcement Liability policies with minimum limits of \$1,000,000 per claim and \$2,000,000 in the aggregate, and will provide Certificates of Insurance to the other party with evidence of such coverage. Each party is responsible for the submission of this Agreement to its own insurance carrier and for production of the Certificate of Insured as required herein to list and identify the other party. A copy of the two (2) Certificates shall be published and exchanged between the parties on an annual basis in conjunction with renewal of its comprehensive insurance coverage.
- 19) This agreement is distinct and separate from and in addition to any prior agreement for jail services on a non-exclusive basis.

Mayor Larry Antoskiewicz, City of North Royalton

Date

Mayor Marie Gallo, City of Parma Heights

Date

Approved as to form: _____
Thomas A. Kelly, Law Director
City of North Royalton

Approved as to form: _____
Mark A. Schneider, Law Director
City of Parma Heights