



**CITY OF HUBER HEIGHTS
STATE OF OHIO
City Council Meeting
Regular Session
April 22, 2024
6:00 P.M.**

City Hall - Council Chambers - 6131 Taylorsville Road - Huber Heights, Ohio

1. **Call The Meeting To Order - Mayor Jeff Gore**
2. **Invocation - Pastor John Gakwaya Of The Compassion Free Methodist Church At 6875 Old Troy Pike, Huber Heights, Ohio**
3. **Flag Ceremony - Wayne High School Junior ROTC Honor Guard**
4. **Pledge Of Allegiance**
5. **Roll Call**
6. **Approval Of Minutes**
 - A. City Council Meeting Minutes - April 10, 2024
7. **Special Presentations/Announcements**
 - A. Wayne High School AFJROTC Special Recognition Presentation - Ms. Sarah McPherson, Parks Manager, And Mayor Jeff Gore
 - B. 2024 Arbor Day Proclamation Presentation To Ms. Sarah McPherson, Parks Manager - Mayor Jeff Gore

- C. Introduction Of New Huber Heights Chamber Of Commerce Executive Director Mason R. Hutton
- D. Veolia Water 2023 Annual Report Presentation - Ms. Pam Whited, Project Manager, Veolia Water

8. **Citizens Comments - Agenda Items**

9. **City Manager Report**

10. **Pending Business**

11. **New Business**

CITY COUNCIL

Anthony Rodgers, Clerk Of Council

- A. A Motion To Appoint Kevin McDonald To The Military And Veterans Commission For A Term Ending December 31, 2026.
- B. A Motion To Direct The Clerk Of Council To Respond To The Ohio Division Of Liquor Control With No Objections In Reference To New Liquor Permit #6200886 For Mr. Pollo Mexican Grill At 4480 Powell Road, Huber Heights, Ohio, 45424.
- C. A Public Hearing Scheduled For April 22, 2024 By The Huber Heights City Council Regarding A Proposed Tax Increment Financing Incentive District To Be Established By The City Of Huber Heights, Ohio Under Ohio Revised Code Section 5709.40(C).

ADMINISTRATION

Richard S. Dzik, City Manager

- D. An Ordinance Creating A Tax Increment Financing Incentive District; Declaring Improvements To The Parcels Within The Incentive District To Be A Public Purpose And Exempt From Real Property Taxation; Requiring The Owners Of Those Parcels To Make Service Payments In Lieu Of Taxes; Establishing A Municipal Public Improvement Tax Increment Equivalent Fund For The Deposit Of Those Service Payments; Specifying The Public Infrastructure Improvements That Benefit Or Serve Parcels In The Incentive District; Authorizing Compensation Payments To Montgomery County, Ohio, The Huber Heights City School District And The Miami Valley Career Technology Center, And Declaring An Emergency.
(first reading)

- E. A Resolution Authorizing The City Of Huber Heights To Enter Into An Agreement With Shipman, Dixon, & Livingston Co., L.P.A. For Prosecutorial Services In Miami County For The City Of Huber Heights, Ohio.
(first reading)
- F. A Resolution Amending And/Or Establishing The City Of Huber Heights Organizational Chart And Authorizing The New Personnel Staffing Levels As Detailed Below.
(first reading)
- G. A Resolution Establishing And/Or Amending The Salary Ranges And Wage Levels For Employees Of The City Of Huber Heights, Ohio.
(first reading)
- H. A Resolution Authorizing The City Manager To Award A Contract For Services Related To The Construction Of A New Public Works Division Facility.
(first reading)
- I. A Resolution Authorizing The City Manager To Solicit, Advertise And Receive Bids From Qualified Firms For The Huber Heights Governance Center Project - Phase 1.
(first reading)
- J. An Ordinance Authorizing Transfers Between Various Funds Of The City Of Huber Heights, Ohio And Amending Ordinance No. 2024-O-2625 By Making Supplemental Appropriations For Expenses Of The City Of Huber Heights, Ohio For The Period Beginning January 1, 2024 And Ending December 31, 2024.
(first reading)
- K. A Resolution Declaring Certain City Property As No Longer Required For Municipal Purposes As Surplus And Authorizing Disposal Of Said Property.
(first reading)
- L. A Resolution Authorizing The Execution Of A Real Estate Purchase And Sale Agreement Between The City Of Huber Heights And Homestead Development, LLC.
(first reading)
- M. A Resolution Authorizing The Execution Of A Real Estate Purchase And Sale Agreement Between The City Of Huber Heights And Carriage Trails At The Heights, LLC.
(first reading)
- N. A Resolution Authorizing The Execution Of A Development Agreement With Continental 752 Fund, LLC.
(first reading)
- O. A Resolution Authorizing The City Manager To Execute Listing Agreements With Apex Realty For The Sale Of Certain City-Owned Parcels.
(first reading)

12. **Citizens Comments - General**
13. **City Official Reports And Comments**
14. **Executive Session**
15. **Adjournment**

AI-10008

Minutes A.

City Council Meeting

Meeting Date: 04/22/2024

Approval Of Minutes - 04/10/2024

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: None

Date(s) of Committee Review: N/A

Audio-Visual Needs: None **Emergency Legislation?:** No

Motion/Ordinance/ N/A

Resolution No.:

Agenda Item Description or Legislation Title

City Council Meeting Minutes - April 10, 2024

Purpose and Background

Approval of the minutes from the April 10, 2024 City Council Meeting.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

There are no financial implications to this agenda item.

Attachments

Minutes

1. Call The Meeting To Order - Mayor Jeff Gore

The Huber Heights City Council met in a Regular Session on April 10, 2024. Mayor Jeff Gore called the meeting to order at 6:37 p.m.

2. Invocation - Pastor Randy Griffith Of The Free Methodist Church At 6875 Old Troy Pike, Huber Heights, Ohio

3. Pledge Of Allegiance

4. Roll Call

Present: Scott Davidson, Kathleen Baker, Mark Campbell, Nancy Byrge, Brian Looney, Anita Kitchen, Don Webb, Jeff Gore

Absent: Fred Aikens

Staff Clerk Of Council Anthony Rodgers; Law Director Christopher Conard;
Present: City Manager Richard Dzik

Mr. Webb moved to excuse Fred Aikens' absence; Mrs. Kitchen seconded the motion. On a call of the vote, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Looney, Mrs. Kitchen, Mr. Webb, and Mr. Davidson voted yea; none voted nay. The motion passes 7-0.

Mayor Gore said Ms. Michelle Helregel from Rainbow Lakes is in the audience this evening. He said hopefully the agreement to sell the property for \$1 provides a great outcome for Rainbow Lakes, and the City looks forward to the partnership with Rainbow Lakes for the youth in the community.

5. Approval Of Minutes

A. City Council Meeting Minutes - March 25, 2024

The minutes for the March 25, 2024 City Council Meeting were approved by the Huber Heights City Council as submitted.

6. Special Presentations/Announcements

A. National Public Safety Telecommunicators Week Mayoral Proclamation Presentation - Mayor Jeff Gore

Mayor Jeff Gore read the proclamation for National Public Safety Telecommunicators Week and presented the proclamation to Ms. Wendy Morris, Communications Supervisor, and Police Chief Mark Lightner.

Police Chief Mark Lightner said the Huber Heights Communications Center employs a fine group of men and women that do a very difficult job. He introduced Ms. Morris. He said sometimes people call in and are at their worst, and the dispatchers take a lot of abuse, but the dispatchers keep coming back.

Mayor Gore said he has two nieces who are dispatchers for other cities, and he hears about the chaos and situations his nieces experience. He said he appreciates the work the dispatchers do and thanked the dispatchers and the supervisory staff in the Police

Division.

- B. Introduction Of The New Law Director Christopher R. Conard And Assistant Law Directors Sarah J. Sparks And Jordan P. Staley From Coolidge Wall Co., L.P.A.

Mr. Christopher Conard said on behalf of Coolidge Wall, it is an honor that the City Council chose this law firm to represent the City of Huber Heights as the Law Director. He gave background information about the firm which goes back to 1853. He said in 1911, one of the lawyers wrote the first City Charter for the City of Dayton. He said the firm has a long history in the public sector and in municipal law. He said it is an honor also to work with the City Staff and work with and for Council, but ultimately the firm works for the residents of the City of Huber Heights. He said Coolidge Wall takes that commitment seriously and holds that commitment as the ultimate mission the firm has to accomplish. He introduced Assistant Law Directors Sarah Sparks and Jordan Staley. He said Ms. Sparks will be his first backup. He said Ms. Sparks has expertise in public sector litigation, zoning, planning, and attending public meetings. He said Mr. Staley is developing his area of expertise in land use and zoning. He discussed the other members of the firm and he reiterated how honored and appreciative the firm is to have the opportunity to represent the City of Huber Heights.

7. Citizens Comments - Agenda Items

There were no comments on agenda items from citizens.

8. City Manager Report

City Manager Richard Dzik said on April 23, 2024, the Ohio Department Of Transportation will begin repair work on the bridge just north of the YMCA on Brandt Pike. He said that portion of Brandt Pike will be completely closed for 14 days and then reduced to one lane for 28 days. He said a styrofoam recycling event will be held at the Rose Music Center on April 13, 2024 from 9:00 a.m. to 1:00 p.m. He said the Summer Music Series schedule was released yesterday on social media and it can also be found on the front page of the City's website. He said the concerts are free and are held at Eichelberger Amphitheater at 6:00 p.m. He said the tax filing deadline is April 15, 2024, and the Huber Heights Tax Division is offering extended hours by appointment only for residents who need assistance. He encouraged residents to e-file through the City's website. He said on April 15, 2024, there are also two workshops on cybersecurity and prevention being at the Huber Heights Library from 1:00 p.m. to 3:00 p.m. and from 6:00 p.m. to 8:00 p.m. He said the workshops are free and registration is not necessary. He said there were two non-events in the past two weeks that resulted in the City Council Meeting being held tonight. He said it is great in the end that the community remained safe and operational during the projected severe storms last week and the solar eclipse this past Monday.

9. Pending Business

There was no pending business.

10. New Business

ADMINISTRATION
Richard S. Dzik, City Manager

- A. A Resolution Authorizing The City Manager To Negotiate A Lease For The Former Sinclair Site Located At 7301 Shull Road And To Enter Into Contract For Professional Design Services To Facilitate Future Use As The Huber Heights Senior Center.
(first reading)

Mr. Dzik said this legislation authorizes work to begin with the YMCA on a lease for the space for the Huber Heights Senior Center and also authorizes the contract for design services.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Mrs. Byrge moved to adopt; Ms. Baker seconded the motion.

Mrs. Byrge asked that once the lease is complete, Councilmembers be advised when discussions will be held regarding design criteria so that anyone who wants to attend is able to do so.

On a call of the vote, Mr. Campbell, Mrs. Byrge, Mr. Looney, Mrs. Kitchen, Mr. Webb, Mr. Davidson, and Ms. Baker voted yea; none voted nay. The motion passes 7-0.

- B. A Resolution Authorizing The City Manager To Enter Into A Change Order With Respect To The Design Contract Of The New Governance Center With LWC, Incorporated.
(first reading)

Mr. Dzik had no additional comments.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Mr. Webb moved to adopt; Mr. Looney seconded the motion.

Mrs. Kitchen said she wants to make sure that as the City is getting larger there will be plenty of space to grow.

Mr. Dzik said there are already empty office spaces planned as temporary storage in the facility, but designed to be future offices. He said to the south of the building, there is projected space that will not be used for parking should the City need to add on to the building in the future.

Mayor Gore said despite the modifications, there is room to bring the south side of the building out and there is room to expand.

Mrs. Kitchen said she hopes the removal of the planned pickleball courts will mean a larger community gathering spot.

Mr. Dzik said there is a proposal by the architect to build an outdoor space for the City Staff.

Mrs. Kitchen said she hopes the community will have a gathering place to go on a Friday night.

Mayor Gore said he thinks a gathering place is a good idea.

On a call of the vote, Mrs. Byrge, Mr. Looney, Mrs. Kitchen, Mr. Webb, Mr. Davidson, Ms. Baker, and Mr. Campbell voted yea; none voted nay. The motion passes 7-0.

- C. An Ordinance Authorizing The Execution Of A Master Lease-Purchase Agreement And Related Payment Schedule For The Purpose Of Acquiring A Sewer Jet/Vacuum Truck For Use By The City, And Declaring An Emergency.
(first reading)

Mr. Dzik said this legislation is to purchase a sewer vacuum truck. He said the City is spending \$14,000 a month renting a truck. He said the Finance Director has asked Council to waive the second reading of this legislation.

Mrs. Kitchen moved to waive the second reading; Mr. Looney seconded the motion. On a call of the vote, Mr. Looney, Mrs. Kitchen, Mr. Webb, Mr. Davidson, Ms. Baker, Mr. Campbell, and Mrs. Byrge voted yea; none voted nay. The motion passes 7-0.

Mr. Webb moved to adopt; Mrs. Kitchen seconded the motion. On a call of the vote, Mrs. Kitchen, Mr. Webb, Mr. Davidson, Ms. Baker, Mr. Campbell, Mrs. Byrge, and Mr. Looney voted yea; none voted nay. The motion passes 7-0.

- D. A Resolution Authorizing A Moral Claim For Damages And Incidentals Associated With A Water Main Break.
(first reading)

Mr. Dzik had no additional comments.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Mrs. Byrge moved to adopt; Mr. Davidson seconded the vote. On a call of the vote, Mr. Webb, Mr. Davidson, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Looney, and Mrs. Kitchen voted yea; none voted nay. The motion passes 7-0.

- E. A Resolution Authorizing The City Manager To Negotiate And Enter Into An Agreement For The Sale Of Land And The Actions Relative To The Sale Of Such Land Identified As Parcel Number P70 03901 0043.
(first reading)

Mr. Dzik said Council recommended an amendment of the sale price of this property to \$1.00, and he said City Staff supports the recommendation.

Mrs. Byrge moved to amend the legislation to change the sale price from \$1,000.00 to \$1.00; Ms. Baker seconded the motion. On a call of the vote, Mr. Davidson, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Looney, Mrs. Kitchen, and Mr. Webb voted yea; none voted nay. The motion passes 7-0.

Mr. Webb moved to adopt; Mrs. Kitchen seconded the motion.

Mrs. Kitchen thanked Michelle Helregel from Rainbow Lakes and she said she would love to work with Rainbow Lakes. She said 20 years ago Rainbow Lakes used to support individuals with disabilities with a visit for a day. She said she would like to reconnect Rainbow Lakes with Montgomery County.

Ms. Helregel said she would love that connection and she said she has been talking to some other nonprofit organizations.

Mr. Looney said he is glad Ms. Helregel is here. He said this legislation is one of the easiest things he has voted on.

On a call of the vote, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Looney, Mrs. Kitchen, Mr. Webb, and Mr. Davidson voted yea; none voted nay. The motion passes 7-0.

- F. A Resolution Authorizing The City Manager To Enter Into A Contract For The Traffic Signal Monitoring Project And Waiving The Formal Bidding Requirements.
(first reading)

Mr. Dzik said this legislation is to ensure that the traffic signals on Old Troy Pike are timed correctly and to approve a firm to monitor the signals.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Mr. Davidson moved to adopt; Mrs. Byrge seconded the motion. On a call of the vote, Mr. Campbell, Mrs. Byrge, Mr. Looney, Mrs. Kitchen, Mr. Webb, Mr. Davidson, and Ms. Baker voted yea; none voted nay. The motion passes 7-0.

- G. A Resolution Authorizing The City Manager To Enter Into A Contract For The 2024 Rehabilitation Of Sewer Lines Project.
(first reading)

Mr. Dzik had no comments on this item.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Mr. Webb moved to adopt; Mr. Looney seconded the motion. On a call of the vote, Mrs. Byrge, Mr. Looney, Mrs. Kitchen, Mr. Webb, Mr. Davidson, Ms. Baker, and Mr. Campbell voted yea; none voted nay. The motion passes 7-0.

Mayor Gore said before he has Mr. Rodgers read Item 10-H, he wants to make sure there is nothing in the legislation moving forward that is going to affect anything the City is doing on the work that City Staff was asked to do based on the overall big picture of the project. He said he wanted to confirm that this work would need to be done regardless.

Mr. Dzik said he spoke with the City Engineer, Russ Bergman, and the City is designing \$9 million worth of water main installation that would cover the City if the City went by the \$4 million per year as referenced for two years. He said City Staff would then come back to City Council for more design work in the near future for the following years.

- H. A Resolution Authorizing The City Manager To Solicit A Request For Proposals (RFP) From Qualified Engineering Consulting Firms To Provide Engineering Design For The 2025-2030 Water Main Replacement Projects.
(first reading)

Mr. Dzik had no comments on this item.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Mrs. Kitchen moved to adopt; Ms. Baker seconded the motion. On a call of the vote, Mr. Looney, Mrs. Kitchen, Mr. Webb, Mr. Davidson, Ms. Baker, Mr. Campbell, and Mrs. Byrge voted yea; none voted nay. The motion passes 7-0.

11. Citizens Comments - General

Ms. Donna Hughes thanked the City for the solar eclipse glasses that were provided to the community. She suggested that the Shull Road eastbound turn lane, which is the left-hand turn lane, be backed up six to eight feet with a stop message so buses, trucks, etc., may move forward. She suggested the City keep the southbound ongoing lane into Carriage Trails, and keep the southbound going onto State Route 201 by making a separate lane that joins up at the county line so traffic can keep flowing in and out. She likes the idea of a traffic light instead of a roundabout. She listed more wishes for traffic lanes and she asked that tickets be issued to people who block the intersections on State Route 202. She asked the City Council to vote no on annexation. She said the Bethel School Board would like to talk to Councilmembers regarding the increase in population.

Ms. Jennifer Dilk presented her opinions on the annexation of Bethel Township land.

She said there is only so much land, and people should be good stewards of this land because there will not be more. She talked about the negative comments made regarding annexation. She said it is a nightmare to move to the country for the look and feel of country living only to have the city next door annex property for housing developments. She said during recent years she has witnessed excessively aggressive development that has ravaged the natural beauty and wildlife in Huber Heights. She discussed Facebook chatter and the growing number of comments regarding the destruction of the community. She said Sinclair College's moving out of Huber Heights removes any local higher education. She said people are paying more for property taxes and water bills, which only addresses the current situation, while thousands more homes, apartments, and businesses are continuing to be developed. She said the annexation is not just bad for Miami County, but is also not good for Huber Heights, and she read a passage from the Bible. She said the question is why does a developer who is currently clearing the land want to work with Huber Heights over Miami County? She said the elected officials repeatedly claim they have no say in what is built on private property. She said if that is the case, then the Councilmembers should have no say in this annexation and leave the land to Bethel Township. She asked the City Council to vote no on annexation and prove to the individuals who elected the members that Council hears the concerns and frustrations of the residents.

12. City Official Reports And Comments

Mrs. Kitchen said the First Tier Suburbs meeting is on the last Wednesday of the month and the topic of discussion will be the Leadership Academy that Kettering has run for 28 years. She said she watched Brie Hall play in the Final Four in Cleveland from center court second row seats. She said Brie Hall was there making Huber Heights proud. She asked if the Farmers Market issue was resolved?

Mr. Dzik said he met with the concerned residents along with the Parks Manager, Sarah McPherson. He said City Staff clarified a few things about City insurance. He said when Ms. McPherson has a meeting with the Farmers Market vendors on April 20, 2024, she will make sure the vendors are aware of the insurance requirements as well as any obligations the vendors have to the City. He said the issue might have been previous messaging versus what is going on now. He said there may have been inaccurate information in the past about how the City's insurance could cover vendors, which it never has and cannot cover vendors.

Mrs. Kitchen said she had some residents bring up food assistance available at the Huber Heights Farmers Market. She said the residents asked how food assistance would be handled if some vendors pulled out.

Mr. Dzik said he will dig into that issue a little bit deeper. He said there is not a final vendor list, but he should know the vendors by April 20, 2024.

Mrs. Kitchen asked what the cost difference is if the City does not require wristbands and covered the cost of the rides for the Fourth Of July celebration at Thomas Cloud Park,

Mr. Dzik said he will have to go back and check to see what the cost would be to cover the wristbands.

Mrs. Kitchen said she has had a number of people call regarding the parks hours of operation, and she asked if park closing times are consistent across the City? She said people being in Community Park after 10:00 p.m. has been a common complaint.

Mr. Dzik confirmed with Mayor Gore that the parks close at dusk. He said he would talk to Police Chief Mark Lightner to have additional patrols ride around to make sure people are clearing out of the parks at dusk

Mayor Gore said he has received emails regarding shenanigans at Community Park close to where the houses back up to the park. He said if someone is having an issue with someone in the park disturbing the peace after park hours, they have to call the Police Division.

Mr. Dzik said in his previous position, the municipality began installing security cameras throughout the City parks. He said the new IT Director starts on Monday, and he would like to investigate cameras as a possibility to discourage people from being in the parks after hours.

Mrs. Kitchen said she loves the idea of cameras, especially if the City is spending money on a pickleball court at Community Park.

Mrs. Byrge thanked Huber Heights Community Cares for putting on the extravaganza this weekend. She said the event was similar to a Trick or Treat but allowed children to go to a long list of homes and businesses to collect eggs and win prizes. She said the home she was at had over 600 kids attend. She said at least a dozen children found gold eggs and won a \$100 shopping trip to Target. She said it was so cute to watch the kids shop and it was a heartfelt experience. She said she has talked to Ms. Cindy Davidson about possibly partnering in the future on those types of activities.

Mr. Davidson requested that Mr. Dzik give a list of the non-repeat vendors that dropped out of the Farmers Market when the list is finalized. He asked Mr. Dzik if he talked to Public Works Manager Mike Gray about the Canal Lock Park sign.

Mr. Dzik said yes, but the Public Works Manager thought the sign was positioned well enough, but City Staff are working on relocating and moving the sign back.

Mr. Davidson said he makes that drive every day, and he said when you look to the left the sign blocks the view of the entire road coming out.

Mayor Gore said there was an issue a long time ago at Fishburg Road and Aaron Lane where overgrowth was blocking the view and adjustments were made.

Mr. Campbell said he has had the opportunity to work with Mayor Gore and he is one of the hardest working people he has ever met and his heart is in the right place. He said positive will always overcome negative. He said Mayor Gore's work on the YMCA with the rest of Council and especially Mr. Webb is tremendous. He said it was an idea pulled out of thin air when the City knew Sinclair College was moving. He said the two young ladies in attendance tonight are a big reason why the City Council felt very much at peace sharing ideas with the seniors and getting their ideas. He said to Mrs. Judy Blankenship that the City honors her and the senior citizens. He said Mayor Gore and Mr. Webb took the lead in making this project a reality.

Mrs. Blankenship said the members of the Huber Heights Senior Center are so excited and grateful. She thanked Council.

Mr. Campbell said John Chambers from Coolidge Wall was the City's first professional attorney. He said there is not a finer man than Mr. Chambers. He said he remembers Mr. Chambers speaking about Mr. Conard, and Mr. Conard is going to be a tremendous asset to the City. He said to Mayor Gore and Mrs. Kitchen that the three have not always agreed, but what Mayor Gore demonstrated tonight is genuine leadership. He asked Mrs. Kitchen if she agreed with his statement.

Mrs. Kitchen agreed.

Mr. Campbell said he appreciated Mayor Gore putting aside his differences and coming up with this suggestion. He said Mrs. Kitchen has been a loud voice for making sure the City maintains the infrastructure. He said Mrs. Kitchen's friend, Mayor Gore, just stepped up and eliminated this topic from being an issue. He said Mr. Dzik has been with the City of Huber Heights for eight months and the City is in fine hands. He said Mr. Dzik is a tremendous manager and a tremendous human being. He said Huber Heights is better because of Mr. Dzik. He said it is still his honor to serve with the new Councilmembers, and he asked that the new Councilmembers remember that positive will always overcome negative. He said God is totally in control, and the City is lucky to have Pastor Randy Griffith pray for Council. He said he could not be happier tonight serving the citizens of Huber Heights. He said his comments were not a paid political speech, but were genuine and from his heart.

In Council Chambers
6131 Taylorsville Road

April 10, 2024

Mayor Gore said he appreciates Mr. Campbell's comments. He said he just learned he could join the Huber Heights Senior Center at age 50, so he is going to become a member.

Mr. Webb said Mr. Campbell is an amazing man who speaks the truth but speaks quietly. He said there is so much positive and good in the City, and no one is championing that fact. He said Mrs. Byrge has been up to the Huber Heights Senior Center with him, and he wishes he could describe the look on the seniors' faces as they toured the new facility at the YMCA. He said a few concerns were easily addressed, and there was boundless excitement about the future. He said there will be another tour on April 23, 2024 at 1:00 p.m. for those who are interested. He said Mr. Chris Lindeman at the YMCA is also planning to have an evening tour in the near future.

Mr. Looney said this meeting has been the most positive City Council Meeting he has attended. He said he is totally excited about the Rainbow Lakes item. He said for the people listening and the people in attendance, he said all of the comments that positive will outweigh negative, people need to hear that message. He said it is nice to hear, to see, and be a part of it. He thanked Council for everyone's words, everyone's work, and everything everyone does. He said the City needs more and he needs more of that positivity.

Mayor Gore said there were some emails regarding the expenditures for the Kroger Aquatic Center. He said he will add this item to a future Council Work Session, and at that point in time he would ask Council to come prepared to start discussing the issues and expenditures for the Kroger Aquatic Center in relationship to the costs and expenditures for the rest of the City parks.

13. Executive Session

There was no need for an Executive Session.

14. Adjournment

Mayor Gore adjourned the Regular Session City Council Meeting at 7:32 p.m.

Clerk of Council

Date

Mayor

Date

AI-10028

Special Presentations/Announcements A.
Parks and Recreation

City Council Meeting

Meeting Date: 04/22/2024

Wayne High School AFJROTC Special Recognition Presentation

Submitted By: Sarah McPherson

Department: Assistant City Manager

Division: Parks/Recreation

Council Committee Review?: None

Date(s) of Committee Review: N/A

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:** N/A

Agenda Item Description or Legislation Title

Wayne High School AFJROTC Special Recognition Presentation - Ms. Sarah McPherson, Parks Manager, And Mayor Jeff Gore

Purpose and Background

The City will present a certificate of recognition to the Wayne High School AFJROTC for its involvement in park cleanup projects at Community Park through the City's Adopt-A-Park program.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

No file(s) attached.

AI-9811

Special Presentations/Announcements B.
Parks and Recreation

City Council Meeting

Meeting Date: 04/22/2024

Wayne High School AFJORTC Special Recognition Presentation

Submitted By: Sarah McPherson

Department: Assistant City Manager

Division: Parks/Recreation

Council Committee Review?: None

Date(s) of Committee Review: N/A

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:** N/A

Agenda Item Description or Legislation Title

2024 Arbor Day Proclamation Presentation To Ms. Sarah McPherson, Parks Manager - Mayor Jeff Gore

Purpose and Background

This Arbor Day proclamation presentation will create awareness and communicate the City's commitment to healthy urban forestry within the City.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Proclamation



Huber Heights Arbor Day Mayoral Proclamation

WHEREAS, established in 1872, Arbor Day encourages the planting, maintenance and protection of trees as a community asset.; and

WHEREAS, Arbor Day is now celebrated throughout the nation and the world; and

WHEREAS, trees benefit the Huber Heights community by reducing topsoil erosion, reducing heating and cooling expense, cleaning the air, and providing life-giving oxygen and a habitat for wildlife; and

WHEREAS, trees are a renewable resource providing paper, wood for homes, fuel for fires, and countless other wood products; and

WHEREAS, trees in the City increase property values, enhance the economic vitality of business areas, and beautify the community; and

WHEREAS, trees - wherever they are planted - are a source of joy and spiritual renewal.

NOW, THEREFORE, I, Jeff Gore, Mayor of the City of Huber Heights, Ohio, do hereby proclaim Friday, April 26, 2024, in Huber Heights, Ohio as:

ARBOR DAY

FURTHERMORE, I urge all citizens to celebrate Arbor Day and support efforts to protect trees and woodlands to promote the well-being of this generation and future generations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Huber Heights to be affixed this twenty-second day of April in the Year of Our Lord, Two Thousand and Twenty-Four.

JEFF GORE
MAYOR

AI-10027

Special Presentations/Announcements C.

City Council Meeting

City Council

Meeting Date: 04/22/2024

Introduction Of New Huber Heights Chamber Of Commerce Executive Director

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: None

Date(s) of Committee Review: N/A

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:** N/A

Agenda Item Description or Legislation Title

Introduction Of New Huber Heights Chamber Of Commerce Executive Director Mason R. Hutton

Purpose and Background

This agenda item is to introduce the new Executive Director at the Huber Heights Chamber Of Commerce, Mason R. Hutton.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

No file(s) attached.

AI-10026

Special Presentations/Announcements D.

City Council Meeting

City Council

Meeting Date: 04/22/2024

Veolia Water 2023 Annual Report Presentation

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: None

Date(s) of Committee Review: N/A

Audio-Visual Needs: Handouts **Emergency Legislation?:** No

Motion/Ordinance/ N/A

Resolution No.:

Agenda Item Description or Legislation Title

Veolia Water 2023 Annual Report Presentation - Ms. Pam Whited, Project Manager, Veolia Water

Purpose and Background

Veolia Water is required by its contract to provide an annual report of its operations to the City Council. The 2023 Annual Report was provided to the City in February, 2024. Pam Whited will be making an overview report presentation of this information at the City Council Meeting on April 22, 2024.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

No file(s) attached.

AI-10025

New Business A.

City Council Meeting

City Council

Meeting Date: 04/22/2024

Military And Veterans Commission Appointment - K. McDonald

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 04/16/2024

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Motion To Appoint Kevin McDonald To The Military And Veterans Commission For A Term Ending December 31, 2026.

Purpose and Background

The City Council interview panel recommends the appointment of Kevin McDonald to the Military and Veterans Commission for a term ending December 31, 2026. A background check on Mr. McDonald has been processed through Human Resources.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Application - K. McDonald



6131 Taylorsville Road
Huber Heights, Ohio 45424
Phone: (937) 233-1423
Fax: (937) 233-1272
www.hhoh.org
An Equal Opportunity Employer

Application For City Boards and Commissions

Qualified applicants are considered for all positions without regard to race, color, religion, sex, national origin, marital or veteran status, or disability.

**PLEASE COMPLETE ALL SECTIONS AND EACH QUESTION
COMPLETELY AND ACCURATELY**

Board or Commission Applied For:

Military And Veterans Commission

Date Applied:

3/20/2024

Last Name :

McDonald

First Name

Kevin

Middle Name

B

Address

8442 Schoolgate Dr

City

Huber Heights

State

Ohio

Zip Code

45424

Home Phone Number

Daytime Phone Number

E-mail Address

EDUCATION

	SCHOOL	COURSE OF STUDY OR DEGREE EARNED
HIGH SCHOOL	Bishop Timon HS	College Studies
COLLEGE	State University of NY at Buffalo	BSIT
GRADUATE SCHOOL	Lindenwood University	MBA
OTHER (Specify)	USN schools in communications and repair	Certified communications repair and operations

COMMUNITY INVOLVEMENT

Please list all civic, community, or non-profit organizations to which you have belonged or currently do belong, and your dates of service.

Organization

Dates of Service

Ginghamsburg Veterans	2018-2022
Micam County Planning Board	2017 -2019
Ginghamsburg tonnato clean up	2029
Tipp City Chamber of commerce	2001-2005

EMPLOYMENT HISTORY

Name of Employer	Position(s) Held	Dates of Employment
Delphi	Engineering Manager	1995 -2005
Tenneco	Project Manager	2005 - 2019
Chewy	Project Manager	2019 - 2023
ADC	Consultant	2023 - Present

REFERENCES

Name	Address	Telephone Number
Cliff Blake	6060 Milo Rd	937 890 3388
Name	Address	Telephone Number
Nick Libertini	1341 Burkhardt Rd Clayton OHIO	937-205-2165
Name Jason Haun	Address Huber Height Heights	Telephone Number 9377510237

STATEMENT OF INTEREST

Please tell us why you are interested in serving on this board or commission

I have served on Miami County planning board as officer and President, and worked with local governments on planning items.

Served as a chamber of commerce member and active officer in Tipp City Chamber of commerce.

I am an active advocate for Veterans and serve to support needs.

REQUIREMENTS AND APPLICANT STATEMENT

Are you at least 18 years of age? ☒ **Yes** ☐ **No**

Do you currently reside in the City of Huber Heights? ☒ **Yes** ☐ **No**

Have you resided in the City of Huber Heights for at least one year prior to making this application? ☒ **Yes** ☐ **No**

Are you a registered voter? ☒ **Yes** ☐ **No**

Are you willing to sign a release to allow the City of Huber Heights to perform a background screening and criminal records check? ☒ **Yes** ☐ **No**

I certify that all of the information furnished in this application and its addenda are true and complete to the best of my knowledge. I understand that the City of Huber Heights may investigate the information I have furnished and I realize that any omissions, misrepresentation or false information in this application and/or its addenda may lead to revocation of any volunteer appointment.

I hereby acknowledge that I, voluntarily and of my own free will, have applied for a volunteer position with the City of Huber Heights with the understanding that the City may use a variety of screening procedures to evaluate my qualifications and suitability for appointment. I have been advised that these screening procedures might include, but are not limited to, interviews, criminal record checks, driving records checks and reference checks. I also acknowledge that any such screening procedures, as reasonably required by the City of Huber Heights, are prerequisites to my appointment to a volunteer position with the City of Huber Heights.

In addition, I also hereby understand that the City of Huber Heights cannot guarantee the confidentiality of the results of, or information obtained through the aforementioned screening procedures. Decisions of the Ohio Supreme Court regarding the Ohio Public Records Act indicate that, with certain enumerated exceptions, records maintained by a governmental entity are a matter of public record and, should a proper request be made by a member of the public for such records, the governmental entity would be required to make such records available to that member of the public within a reasonable time. Additionally, all information furnished in this application is subject to disclosure under the Ohio Public Records Act.

Therefore, in consideration of my application being reviewed by the City of Huber Heights, under no legal disability, and on behalf of my heirs and assigns, hereby release and agree to hold harmless the City of Huber Heights and any of its agents, employees, or related officials from any and all liability, whatever the type and nature resulting from the administration of any such screening procedures and/or release of the results therefrom.

Kevin McDonald

3/20/2024

Signature

Date

AI-10024

City Council Meeting

Meeting Date: 04/22/2024

Liquor Permit #6200886 - Mr. Pollo Mexican Grill - 4480 Powell Road

Submitted By: Anthony Rodgers

Department: City Council

Type of New

Liquor Permit:

Motion/Ordinance/

Resolution No.:

**New Business B.
City Council**

Agenda Item Description

A Motion To Direct The Clerk Of Council To Respond To The Ohio Division Of Liquor Control With No Objections In Reference To New Liquor Permit #6200886 For Mr. Pollo Mexican Grill At 4480 Powell Road, Huber Heights, Ohio, 45424.

Review and Comments - Police Division

The Police Division has no objections to this liquor permit application.

Review and Comments - Fire Division

The Fire Division has no objections to this liquor permit application.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Memorandum - Fire Division

Liquor Permit



Huber Heights Fire Division

TO: Anthony Rodgers, Clerk of Council

FROM: Keith Knisley, Fire Chief

DATE: 4/10/2024

RE: Liquor Permit #66200886– Mr. Pollo Mexican Grill

I am writing to inform you that there are no outstanding Fire Code Violations as any violations at the time of the last annual fire inspection have been rectified.

OHIO DIVISION OF LIQUOR CONTROL

6606 TUSSING ROAD

P.O. BOX 4005

REYNOLDSBURG, OHIO 43068-9005

NOTICE TO LEGISLATIVE AUTHORITY

TO

6200886 PERMIT NUMBER		NEW TYPE	MR POLLO MEXICAN GRILL LLC 4480 POWELL RD HUBER HEIGHTS, OH, 45424
ISSUE DATE			
03/08/2024 FILING DATE			
D5 PERMIT CLASSES			
57 TAX DISTRICT	083	E011423 RECEIPT NO.	

FROM 03/28/2024

PERMIT NUMBER		TYPE
ISSUE DATE		
FILING DATE		
PERMIT CLASSES		
TAX DISTRICT		RECEIPT NO.



MAILED

RESPONSES MUST BE POSTMARKED NO LATER THAN.

IMPORTANT NOTICE

PLEASE COMPLETE AND RETURN THIS FORM TO THE DIVISION OF LIQUOR CONTROL

WHETHER OR NOT THERE IS A REQUEST FOR A HEARING.

REFER TO THIS NUMBER IN ALL INQUIRIES

(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT
THE HEARING BE HELD ☐ IN OUR COUNTY SEAT. ☐ IN COLUMBUS.WE DO NOT REQUEST A HEARING. ☐

DID YOU MARK A BOX? IF NOT, THIS WILL BE CONSIDERED A LATE RESPONSE.

PLEASE SIGN BELOW AND MARK THE APPROPRIATE BOX INDICATING YOUR TITLE:

(Signature)

(Title) ☐ Clerk of County Commissioner
☐ Clerk of City Council
☐ Township Trustee

(Date)

CLERK OF HUBER HGTS CITY COUNCIL
6131 TAYLORSVILLE RD
HUBER HGTS OHIO 45424CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AI-10033

**New Business C.
City Council**

City Council Meeting

Meeting Date: 04/22/2024

Waverly Place TIF District - Public Hearing

Submitted By: Bryan Chodkowski

Department: Assistant City Manager

Council Committee Review?: None **Date(s) of Committee Review:** 04/16/2024

Audio-Visual Needs: SmartBoard **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Public Hearing Scheduled For April 22, 2024 By The Huber Heights City Council Regarding A Proposed Tax Increment Financing Incentive District To Be Established By The City Of Huber Heights, Ohio Under Ohio Revised Code Section 5709.40(C).

Purpose and Background

Pursuant to Council's previous direction, final legislation establishing the Waverly Place TIF will be considered by Council at the April 22, 2024 City Council Meeting. Per statute, a public hearing needs to be held prior to Council's consideration of the ordinance. As part of that hearing, this presentation will explain to interested parties the background and purpose of the Waverly Place TIF.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Public Hearing Notice



NOTICE OF PROPOSED TAX INCREMENT FINANCING INCENTIVE DISTRICT

AND

PUBLIC HEARING

City of Huber Heights
6131 Taylorsville Rd.
Huber Heights, OH 45424

937.233.1423
937.233.1272 fax

www.hhoh.org

February 19, 2024

To: Campbell Berling Development Company, LLC
c/o CB Management Services, Inc.
3333 Madison Pike, Suite C
Ft. Wright, KY 41017
Attention: Greg Berling

Subject: Notice of Ohio Revised Code Section 5709.40(C)
Proposed Tax Increment Financing Incentive District

This letter constitutes notice to you of a proposed tax increment financing incentive district to be established by the City of Huber Heights, Ohio under Ohio Revised Code Section 5709.40(C). Your property (tax parcel number P70039080126) is included within the proposed district. The proposed tax increment financing incentive district will allow the City to finance infrastructure improvements that benefit or serve your property. The creation of the proposed tax increment financing incentive district will not result in the levy of new real property taxes on your property.

You have the right to exclude your parcel(s) from the proposed district if your parcel is not entirely within the overlay area for the incentive district shown on the attached map. To do so, you will need to deliver written notice of your election to exclude your parcel to Huber Heights City Council. Your notice should include your name, address, phone number, a statement of your desire to exclude your parcel(s) and the street address or tax parcel number for the parcel to be excluded. To be effective, your notice must be either: (i) sent by first class mail to 6131 Taylorsville Road, Huber Heights, Ohio 45424, Attention: Kyren Gantt, Economic Development Coordinator not later than forty-five days after the postmark date for this notice, or (ii) delivered in person at the public hearing described below. We also encourage you to e-mail your notice to us at KGantt@hhoh.org.

No action on your part is required to create the proposed tax increment financing incentive district. Huber Heights City Council will conduct a public hearing regarding the proposed tax increment financing incentive district at its April 22, 2024 council meeting, which begins at 6:00 p.m. and will be held at Council Chambers at Huber Heights City Hall, 6131 Taylorsville Road, Huber Heights, Ohio 45424. If you choose, you may appear and address Council regarding the proposed tax increment financing incentive district at this public hearing.

If you have any questions regarding this notice or the proposed tax increment financing incentive district, or if you would like a copy of the proposed ordinance establishing the district, please call me at (937) 237-5821.



City of Huber Heights
6131 Taylorsville Rd.
Huber Heights, OH 45424

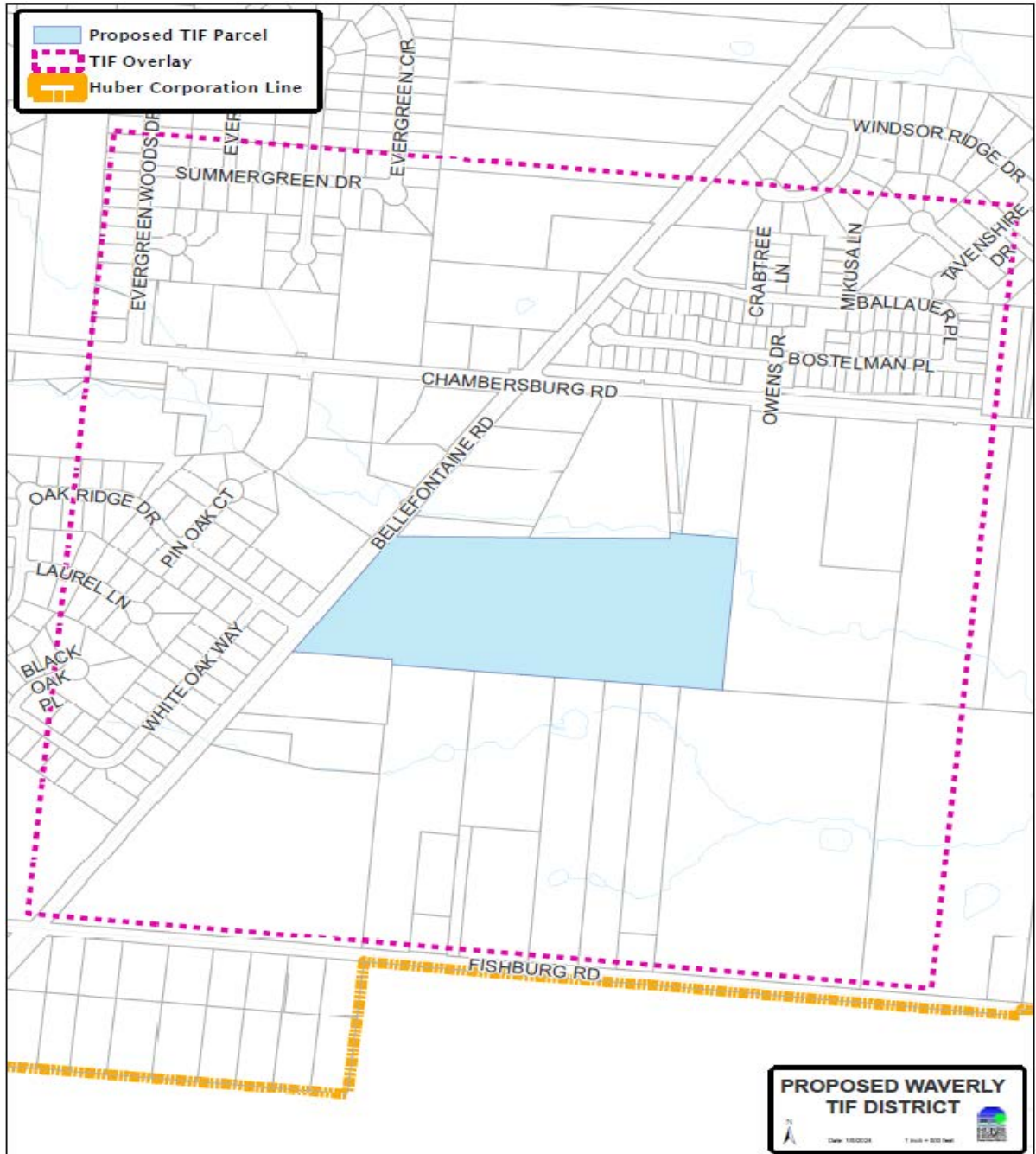
937.233.1423
937.233.1272 fax

www.hhoh.org

Respectfully,

Kyren Gantt, MPA
Economic Development Coordinator

**Attachment:
Map and Overlay**



AI-10022

New Business D.

City Council Meeting

City Manager

Meeting Date: 04/22/2024

Waverly Place TIF District

Submitted By: Kyren Gantt

Department: Assistant City Manager

Council Committee Review?: Council Work Session

Division: Economic Development

Date(s) of Committee Review: 04/16/2024

Audio-Visual Needs: None

Emergency Legislation?: Yes

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

An Ordinance Creating A Tax Increment Financing Incentive District; Declaring Improvements To The Parcels Within The Incentive District To Be A Public Purpose And Exempt From Real Property Taxation; Requiring The Owners Of Those Parcels To Make Service Payments In Lieu Of Taxes; Establishing A Municipal Public Improvement Tax Increment Equivalent Fund For The Deposit Of Those Service Payments; Specifying The Public Infrastructure Improvements That Benefit Or Serve Parcels In The Incentive District; Authorizing Compensation Payments To Montgomery County, Ohio, The Huber Heights City School District And The Miami Valley Career Technology Center, And Declaring An Emergency.
(first reading)

Purpose and Background

The purpose of this Economic Development Plan (the "Plan") is to satisfy the requirement of Section 5709.40(A)(5)(f) of the Ohio Revised Code, which requires that an economic development plan evidence that the public infrastructure serving a proposed residential tax increment financing incentive district is inadequate to meet the development needs of the district. This Plan has been developed to continue the efficient and effective development of the City of Huber Heights, Ohio (the "City"). This Plan relates to the proposed 97-unit residential development within the City on approximately 22.38 acres, known as the Waverly Development Project (the "Project"). The proposed development is located east of Bellefontaine Road, north of Fishburg Road, and south of Chambersburg Road. The City has determined that the construction of the Project is expected to result in the creation of employment opportunities within the City as well as the creation of various types of housing for residents of the City.

The City is considering the creation of a residential Tax Increment Financing (TIF) Incentive District (the "Incentive District") which will include the proposed residential development. The Incentive District will: (1) use quality architecture and design; (2) permit the development of high quality, multi-unit housing; (3) enhance the City by providing for public infrastructure improvements necessary for the preservation and advancement of public health, safety, and well-being; and (4) increase the City's collection of income taxes and, over time, real property taxes.

Fiscal Impact

Source of Funds: Tax Increment Financing (TIF)

Cost: \$0

Recurring Cost? (Yes/No): No

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

The developer forecasts 97 housing units with an average sale price per unit of \$324,731.

Attachments

Presentation

Ordinance

Exhibit A

Exhibit A - Attachment A

Exhibit A - Attachment B

Exhibit B

Certificate Of City Engineer

Waverly Development TIF District

April 16, 2024

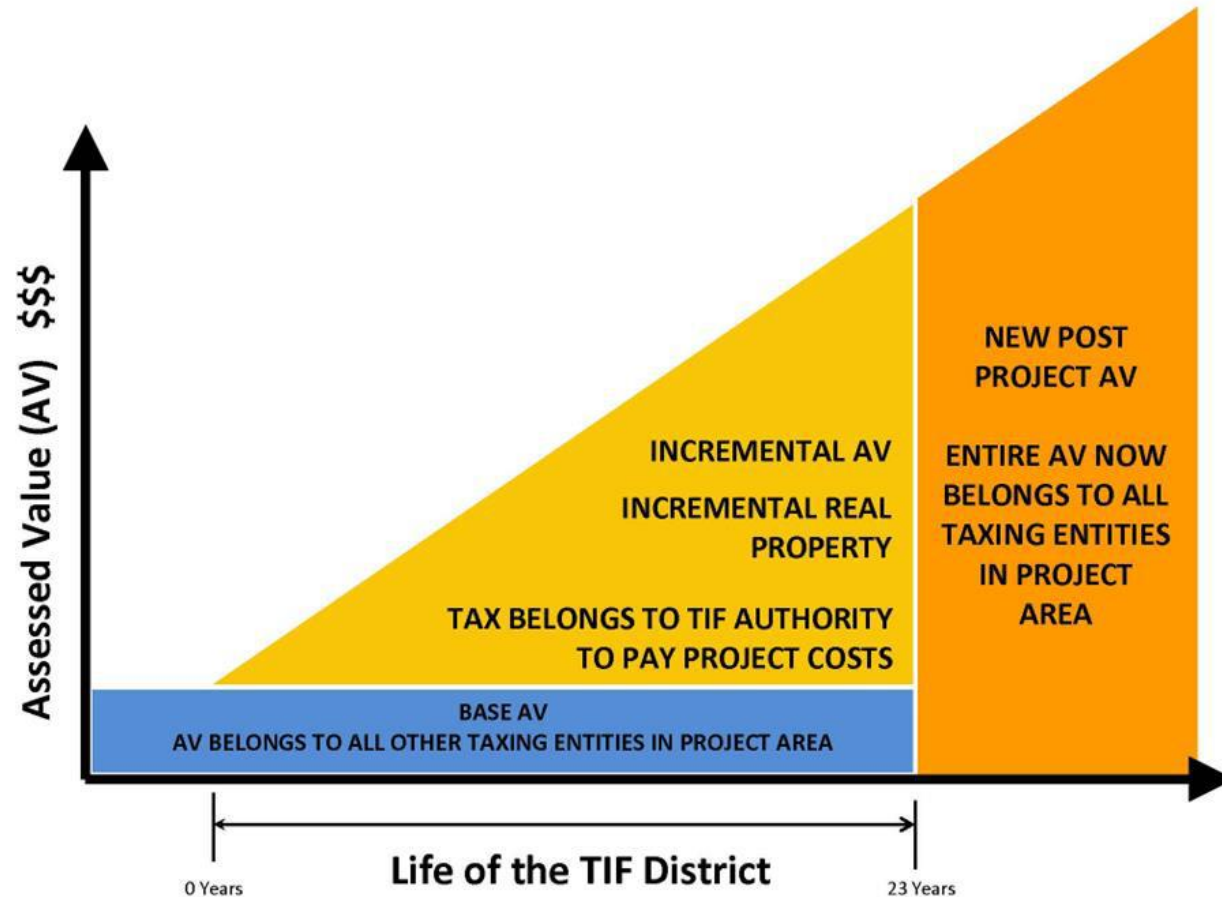


Waverly Development TIF District

- Tax Increment Financing (TIF) is a way to capture property tax dollars from new development and leveraging those dollars as a way to directly support that new development.
- TIFs are authorized under the Ohio Revised Code (ORC).
- TIF monies are spent on “stuff”, not people.
- The Waverly Development TIF does not impact the Huber Heights City Schools District.

Waverly Development TIF District

How Exactly
Does a TIF
Work?



Waverly Development TIF District

97-unit residential development within the City on approximately 22.38 acres.

HHCS not affected by the TIF.

30-year gross revenue of \$3.665 million

Effective for calendar year 2024.



Waverly Development TIF District



Waverly Site Plan

Waverly Development TIF District

Ordinance 2024-O-2627, adopted by Council on February 12, designates the Waverly Development TIF funds to the following improvements:

Phase 1 Improvements: Construction of utility, entry and roadway infrastructure.

Phase 2 Improvements: Replacement, repair, maintenance, and/or construction of new or existing permanent improvement amenities located within the Incentive District.

Phase 3 Improvements: Street, Water, Sewer, and Storm Sewer infrastructure as addressed in Citywide Infrastructure Reliance Study prepared by LBJ, Inc. dated September 30, 2022.

**Service payments in lieu of taxes collected from the proposed Incentive District will fund public infrastructure improvements necessary to support residential development.*



Waverly Development TIF District

- January 16 (Work Session) Introduce Economic Development Plan
- January 22 (Council Meeting) First Reading
- February 12 (Council Meeting) Second Reading & Final Adoption
- February 19 Notice to Property Owner(s), County Commission Office & School Districts
- *April 22 (Council Meeting)* *Public Hearing & First Reading (TIF Ordinance)*
- May 9 (Council Meeting) Second Reading & Final Adoption

Waverly Development TIF District

QUESTIONS?

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2024-O-

CREATING A TAX INCREMENT FINANCING INCENTIVE DISTRICT; DECLARING IMPROVEMENTS TO THE PARCELS WITHIN THE INCENTIVE DISTRICT TO BE A PUBLIC PURPOSE AND EXEMPT FROM REAL PROPERTY TAXATION; REQUIRING THE OWNERS OF THOSE PARCELS TO MAKE SERVICE PAYMENTS IN LIEU OF TAXES; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF THOSE SERVICE PAYMENTS; SPECIFYING THE PUBLIC INFRASTRUCTURE IMPROVEMENTS THAT BENEFIT OR SERVE PARCELS IN THE INCENTIVE DISTRICT; AUTHORIZING COMPENSATION PAYMENTS TO MONTGOMERY COUNTY, OHIO, THE HUBER HEIGHTS CITY SCHOOL DISTRICT AND THE MIAMI VALLEY CAREER TECHNOLOGY CENTER, AND DECLARING AN EMERGENCY.

WHEREAS, this Council has determined pursuant to Ohio Revised Code (“*ORC*”) Sections 5709.40, 5709.42 and 5709.43 (collectively, the “*TIF Statutes*”) to declare the improvement to each parcel of real property located within the incentive district to be a public purpose and exempt from taxation, require the owner of each parcel to make service payments in lieu of taxes, require the owner of each parcel to make service payments in lieu of taxes, to provide for the distribution of an applicable portion of such service payments to the County of Montgomery, Ohio, the Huber Heights City School District and the Miami Valley Career Technology Center, establish a municipal public improvement tax increment equivalent fund for the deposit of the remainder of those service payments, and specify public infrastructure improvements made, to be made or in the process of being made that benefit or serve, or that once made will benefit or serve, parcels in the incentive district; and

WHEREAS, this Council has determined to create the Waverly Development Project Incentive District, a residential incentive district (the “*Incentive District*”), the boundaries of which will be coextensive with the boundaries of, and will include, the parcels of real property specifically identified and depicted in Exhibit B attached hereto (as currently or subsequently configured, the “*Parcels*”, with each of those parcels referred to herein individually as a “*Parcel*”); and

WHEREAS, the City anticipates that 97 new single-family homes will be constructed within the Incentive District (collectively, the “*Project*”); and

WHEREAS, by Ordinance No. 2024-O-2627 passed on February 12, 2024, this Council approved an Economic Development Plan for the Incentive District (the “*Economic Development Plan*”), which Economic Development Plan is on file in the City’s Division of Engineering; and

WHEREAS, the City Engineer has certified to this Council that (i) the Incentive District and the related overlay area is less than 300 acres in size and is enclosed by a continuous boundary and (ii) the public infrastructure serving the Incentive District is inadequate to meet the development needs of the Incentive District as evidenced by the Economic Development Plan; and

WHEREAS, this Council has determined to provide for the construction of public infrastructure improvements described in Exhibit A attached hereto (the “*Public Infrastructure Improvements*”), which Public Infrastructure Improvements, once made, will benefit or serve the Parcels; and

WHEREAS, notice of the public hearing regarding this Ordinance has been sent by first class mail to each owner of real property within the proposed Incentive District at least 30 days prior to such hearing, which notice included a map of the proposed Incentive District as well as the overlay area required by ORC Section 5709.40(C)(2); and

WHEREAS, a public hearing regarding this Ordinance was conducted by the City on April 22, 2024, which hearing was conducted at least 30 days following the provision of notice to each owner of real property within the proposed Incentive District; and

WHEREAS, notice of this proposed Ordinance has been delivered to the Board of County Commissioners of Montgomery County, Ohio, in accordance with and within the time period prescribed in ORC Section 5709.40(E); and

WHEREAS, notice of this proposed Ordinance has been delivered to the Board of Education of the Huber Heights City School District and the Miami Valley Career Technology Center in accordance with and within the time periods prescribed in ORC Sections 5709.40 and 5709.83;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Huber Heights, State of Ohio, of the elected members concurring, that:

Section 1. Incentive District Findings and Determinations; Creation of Incentive District. This Council hereby: (a) accepts and adopts the City Engineer's certification to this Council and the City Engineer's findings set forth therein that (i) the Incentive District and the related overlay area is less than 300 acres in size and is enclosed by a continuous boundary and (ii) the public infrastructure serving the Incentive District is inadequate to meet the development needs of the Incentive District as evidenced by the Economic Development Plan, (b) finds and determines that the Project will place additional demand on the Public Infrastructure Improvements, (c) finds and determines that the City sent written notice of the public hearing regarding this Ordinance by first class mail to each owner of real property within each proposed Incentive District at least 30 days prior to such hearing, which notice included a map of the proposed Incentive District as well as the overlay area required by ORC Section 5709.40(C)(2), (d) finds and determines that this Council has not received a request from the owner of any real property within any proposed Incentive District to exclude that owner's property from the Incentive District, (e) finds and determines that notice of this Ordinance has been delivered to the Board of County Commissioners of Montgomery County, Ohio within the time period prescribed in ORC Section 5709.40 and (f) finds and determines that notice of this ordinance has been delivered to the Huber Heights City School District and the Miami Valley Career Technology Center within the time periods prescribed in ORC Sections 5709.40 and 5709.83. This Council further finds that the sum of the taxable value of real property in the Incentive District for tax year 2023 and the taxable value of all real property in the City that would have been taxable in tax year 2023 were it not for the fact that the property was in an existing incentive district and therefore exempt from taxation, does not exceed twenty-five percent of the taxable value of real property within the City for tax year 2023. Pursuant to the TIF Statutes, this Council creates the Incentive District, the boundaries of which are coextensive with the boundaries of, and include, the Parcels as depicted on **EXHIBIT A** attached hereto.

Section 2. Public Infrastructure Improvements. This Council designates the Public Infrastructure Improvements described in **ATTACHMENT B** attached hereto, and any other public infrastructure improvements hereafter designated by ordinance, as public infrastructure improvements made, to be made or in the process of being made by the City that benefit or serve, or that once made will benefit or serve, the Parcels.

Section 3. Authorization of Tax Exemption; Life of Incentive District. Pursuant to and in accordance with the provisions of ORC Section 5709.40(C), this Council hereby declares that 100% of the increase in assessed value of each Parcel subsequent to the effective date of this Ordinance (which increase in assessed value is hereinafter referred to as the "Improvement," as defined in ORC Section 5709.40(A)) is a public purpose and exempt from taxation for a period coextensive with the life of the Incentive District. The life of the Incentive District commences with the first tax year that begins after the effective date of this Ordinance and in which an Improvement attributable to a new structure would first appear on the tax list and duplicate of real and public utility property for any Parcel within the Incentive District were it not for the exemption granted in this Ordinance and ends on the earlier of (a) 30 years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Statutes. Notwithstanding any other provision of this Ordinance, the exemption granted pursuant to this Section 3 and the payment obligations established pursuant to Section 4 of this Ordinance are subject and subordinate to any tax exemption applicable to the Improvement approved by the City pursuant to ORC Sections 3735.65 through 3735.70.

Section 4. Service Payments and Property Tax Rollback Payments. Subject to any tax exemption applicable to the Improvement approved by the City pursuant to ORC Sections

3735.65 through 3735.70, and pursuant to ORC Section 5709.42, the owner of each Parcel is hereby required to make annual service payments in lieu of taxes with respect to the Improvement to that Parcel to the Treasurer of Montgomery County, Ohio (the “*County Treasurer*”) on or before the final dates for payment of real property taxes. Each service payment in lieu of taxes, including any penalties and interest at the then current rate established for real property taxes (collectively, the “*Service Payments*”), will be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement if it were not exempt from taxation pursuant to Section 3 of this Ordinance. The Service Payments, and any other payments with respect to each Improvement that are received by the County Treasurer in connection with the reduction required by ORC Sections 319.302, 321.24, 323.152 and 323.156, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time (the “*Property Tax Rollback Payments*”), will be deposited and distributed in accordance with Section 6 of this Ordinance.

Section 5. TIF Fund. This City Council establishes, pursuant to and in accordance with the provisions of ORC Section 5709.43, the Waverly Development Incentive District Municipal Public Improvement Tax Increment Equivalent Fund (the “*TIF Fund*”). The TIF Fund shall be maintained in the custody of the City and shall receive all distributions to be made to the City pursuant to Section 6 of this Ordinance. Those Service Payments and Property Tax Rollback Payments received by the City with respect to the Improvement of each Parcel and so deposited pursuant to ORC Section 5709.42 shall be used solely for the purposes authorized in the TIF Statutes or this Ordinance (as it may be amended or supplemented). The TIF Fund shall remain in existence so long as such Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the TIF Fund shall be dissolved and any incidental surplus funds remaining therein transferred to the City's General Fund, all in accordance with ORC Section 5709.43.

Section 6. Distribution of Funds. Pursuant to the TIF Statutes, the County Treasurer is requested to distribute the Service Payments and the Property Tax Rollback Payments as follows:

(a) to Montgomery County, Ohio, any amounts payable pursuant to ORC Section 5709.40(E)(3) or as otherwise established in a compensation agreement between the City and Montgomery County, Ohio;

(b) to the Huber Heights City School District, an amount equal to the amount the Huber Heights City School District would otherwise have received as real property tax payments (including the applicable portion of any Property Tax Rollback Payments) derived from the Improvement to each Parcel if the Improvement had not been exempted from taxation pursuant to this Ordinance;

(c) to the Miami Valley Career Technology Center, an amount equal to the amount the Miami Valley Career Technology Center would otherwise have received as real property tax payments (including the applicable portion of any Property Tax Rollback Payments) derived from the Improvement to each Parcel if the Improvement had not been exempted from taxation pursuant to this Ordinance; and

(d) to the City, all remaining amounts for further deposit into the TIF Fund for payment of costs of the Public Infrastructure Improvements, including, without limitation, debt charges on any notes or bonds of the City issued to pay or reimburse costs of those Public Infrastructure Improvements or finance costs for those improvements.

All distributions required under this Section are requested to be made at the same time and in the same manner as real property tax distributions.

Section 7. Further Authorizations. This City Council hereby authorizes and directs the City Manager, the Director of Finance, the Law Director, the Clerk of Council or other appropriate officers of the City to make such arrangements as are necessary and proper for collection of the Service Payments and the Property Tax Rollback Payments. This City Council further hereby authorizes and directs the City Manager, the Director of Finance, the Law Director, the Clerk of

Council or other appropriate officers of the City to prepare and sign all documents and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 8. Tax Incentive Review Council. The applicable Tax Incentive Review Council, with the membership of that Council to be constituted in accordance with ORC Section 5709.85, shall, in accordance with ORC Section 5709.85, review annually all exemptions from real property taxation granted by this Ordinance and any other such matters as may properly come before that Council, all in accordance with ORC Section 5709.85.

Section 9. Filings with Ohio Department of Development. Pursuant to ORC Section 5709.40(I), the City Manager is hereby directed to deliver a copy of this Ordinance to the Director of the Ohio Department of Development within fifteen days after its effective date. Further, and on or before March 31 of each year that the tax exemption authorized by Section 3 remains in effect, the Director of Development or other authorized officer of the City is directed to prepare and submit to the Director of the Ohio Department of Development the status report required under ORC Section 5709.40(I).

Section 10. Open Meetings. This City Council finds and determines that all formal actions of this City Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Council or any of its committees, and that all deliberations of this City Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including ORC Section 121.22.

Section 11. Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the City, and for the further reason that this Ordinance is required to be immediately effective in order to facilitate the orderly and timely development of the Project and the related Public Infrastructure Improvements; therefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed by Council on the ____ day of _____, 2024;
____ Yea; ____ Nay.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

CERTIFICATE

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2024-O-____ passed by the City Council of the City of Huber Heights, on _____, 2024.

Clerk of Council

EXHIBIT A

CITY OF HUBER HEIGHTS, OHIO
WAVERLY DEVELOPMENT PROJECT
ECONOMIC DEVELOPMENT PLAN
RESIDENTIAL INCENTIVE DISTRICT

November 30, 2023

The Plan

The purpose of this Economic Development Plan (the “Plan”) is to satisfy the requirement of Section 5709.40(A)(5)(f) of the Ohio Revised Code, which requires that an economic development plan evidence that the public infrastructure serving a proposed residential tax increment financing incentive district is inadequate to meet the development needs of the district. This Plan has been developed to continue the efficient and effective development of the City of Huber Heights, Ohio (the “City”).

Proposed Development

This Plan relates to the proposed 97-unit residential development within the City on approximately 22.38 acres, known as the Waverly Development Project (the “Project”). The proposed development is located east of Bellefontaine Road, north of Fishburg Road, and south of Chambersburg Road. The City has determined that the construction of the Project is expected to result in the creation of employment opportunities within the City as well as the creation of various types of housing for residents of the City. The current development plans for the Project are contained in Attachment A.

Proposed Incentive District

The City is considering the creation of a residential Tax Increment Financing (TIF) Incentive District (the “Incentive District”) which will include the proposed residential development. The Incentive District will: (1) use quality architecture and design; (2) permit the development of high quality, multi-unit housing; (3) enhance the City by providing for public infrastructure improvements necessary for the preservation and advancement of the public health, safety, and well-being; and (4) increase the City’s collection of income taxes and, over time, real property taxes.

Public Infrastructure Improvements

Service payments in lieu of taxes collected from the proposed Incentive District will fund public infrastructure improvements necessary to support residential development, including, without limitation, the following improvements:

Phase I Improvements include the construction of utility, entry and roadway infrastructure. It shall be the obligation of the Project developer to construct the water lines, fire hydrants, valves, and related appurtenances within the Project, which water lines, fire hydrants, valves, and related appurtenances shall be installed

and inspected pursuant to plans and specifications approved by the City Engineer in accordance with the City's standards. All roads constructed within the Project shall be constructed by the Project developer as needed for its intended use of the Project. All public roads shall be constructed in accordance with City standards as applicable to the type of road being constructed and all private roads shall be constructed in accordance with final development plans and permits approved by the City. All roads shall be reviewed, inspected and approved by the City. Additionally, Phase I Improvements include the construction of a pump station. Project engineer estimates total cost of \$1,081,545,72 for Phase I Improvements.

Phase II Improvements will include the replacement, repair, maintenance, and/or construction of new or existing permanent improvement amenities located within the Incentive District; or any costs directly associated thereto such as design and other related costs, any right-of-way acquisition, erosion and sediment control measures, grading and other related work, survey work, soil engineering and construction staking, and in each case, all other costs and improvements necessary and appurtenant thereto. For the purposes of this phase, "permanent improvement" shall have the same meaning as defined in Section 133.01(CC) of the Ohio Revised Code.

Phase III Improvements will include all Public Infrastructure Improvements (as that term is defined in Section 5709.40(A)(8) of the Ohio Revised Code) that directly benefit, or that once made will directly benefit, the Incentive District, as detailed in the Citywide Infrastructure Reliance Study prepared by LBJ, Inc. (see Attachment B), dated September 30, 2022. Phase III Improvements will also include, but not be limited to, excavating, grading, paving, constructing and installing curbs and gutters, public utilities which include water mains, sanitary sewers, and storm sewers, street lighting, sidewalks, bikeways, landscaping, traffic signalization, and also including design and other related costs, any right-of-way acquisition, erosion and sediment control measures, grading and other related work, survey work, soil engineering and construction staking, and in each case, all other costs and improvements necessary and appurtenant thereto, all of which will directly benefit, or that one made will direct benefit the Incentive District.

Conclusion

Residential development has been an important catalyst to the City's economic development success. The proposed development area will serve as an additive for sustaining such economic development in the City. The residential development will provide a desired housing option for the City's growing population.

The public infrastructure improvements will support the residential development by increasing the safety levels of the pedestrian transportation and recreational amenities utilized by the residents of the proposed development. The proposed Incentive District is located in an area identified by the City for growth and development.

Analysis and Assessment

The proposed residential development described in this Plan will help play a vital role in supporting the growth and preservation of the community through planned development. The proposed residential development will create an urgent need for infrastructure upgrades in this area of the City. The service payments in lieu of taxes generated by the proposed Incentive District will assist in financing public infrastructure improvements vital to the growth and development of the proposed development. Moreover, the Incentive District will ensure such amenities are maintained in a timely and appropriate manner to ensure their safe and effective use by residents of the proposed development.

Attachments

Attachment A: Current development plans for the Project

Attachment B: Citywide Infrastructure Reliance Study

[illegible]

© Copyright 2023, MCGILL SMITH PUNSHON, Inc.

**CITY OF HUBER HEIGHTS
SITUATE IN SECTION 16, TOWNSHIP 2, RANGE 8, MRS
MONTGOMERY, OHIO**

SITE LAYOUT PLAN

Project Number	20632.00
Drawing Scale	1"=60'
Sheet Number	EXHIBIT
File Number	20632



EXHIBIT A - ATTACHMENT B



CITYWIDE INFRASTRUCTURE RELIANCE STUDY

September 30, 2022

PREPARED FOR:

City of Huber Heights
Mr. Bryan Chodkowski

6131 Taylorsville Road
Huber Heights, Ohio 45424

PREPARED BY:

LJB Inc.

2500 Newmark Drive
Miamisburg, OH 45342
(937) 259-5000

Daniel J. Hoying, P.E., P.S., STP
DHoying@LJBinc.com

TABLE OF CONTENTS

METHODOLOGY	1
Appendices	5
> Appendix A: Infrastructure District 1	
> Appendix B: Infrastructure District 2	
> Appendix C: Infrastructure District 3	
> Appendix D: Infrastructure District 4	
> Appendix E: Infrastructure District 5	
> Appendix F: Infrastructure District 6	
> Appendix G: Infrastructure District 7	
> Appendix H: Infrastructure District 8	

METHODOLOGY

BACKGROUND

The City of Huber Heights commissioned LJB Inc. to conduct a citywide Infrastructure Reliance Study that evaluates critical linkages in the city's roadway, water, wastewater, and stormwater infrastructure. The results of this study will help the city better understand the correlation and interdependence of infrastructure elements, which will better position the city for funding opportunities for the maintenance and expansion of critical services for city residents and businesses. Increased funding for infrastructure allows Huber Heights to better distribute improvements throughout the city, improve service, and attract new developments.

The City of Huber Heights covers 25 square miles with a population of more than 43,000 residents and 800 businesses. The city also includes 233.91 centerline miles of roadways, 210.24 miles of water main, 189.71 miles of sanitary sewer, and 163.81 miles of stormwater infrastructure facilities.

INFRASTRUCTURE ATTRIBUTE APPROACH

Infrastructure Districts

Allocation of the city's 45,833 individual infrastructure elements distributed over 25 square miles requires suballocation of districts within the city. The LJB team collaborated with city staff to develop 8 Infrastructure Districts. Most city infrastructure exists within roadway right of way. Right of way for major roadway corridors were selected as borders of the Infrastructure Districts. The city corporation limits were bisected by SR 202 and SR 201 in the north and south direction and by the Montgomery County / Miami County line, I-70, Taylorsville Road and Fishburg Road in the east west directions. These corridors were selected as District borders at various points in the city. **Figure 1**, on the following page, depicts the Infrastructure Districts that are used throughout this study.

The infrastructure facilities identified for evaluation in this study are each linked to the residents and businesses in the city in different ways. For that reason, a different approach was used for the determination of how each of the different infrastructure facility categories provides service to a region of the city. A description of the allocation approach that was used for each asset category is included below.

Mapping of the infrastructure elements attributable to each of the Infrastructure Districts is included in the Appendices of this report. Maps include an overall District Infrastructure Map as well as individual maps for each of the roadway, water, sanitary sewer and stormwater assets for that district.

Roadways

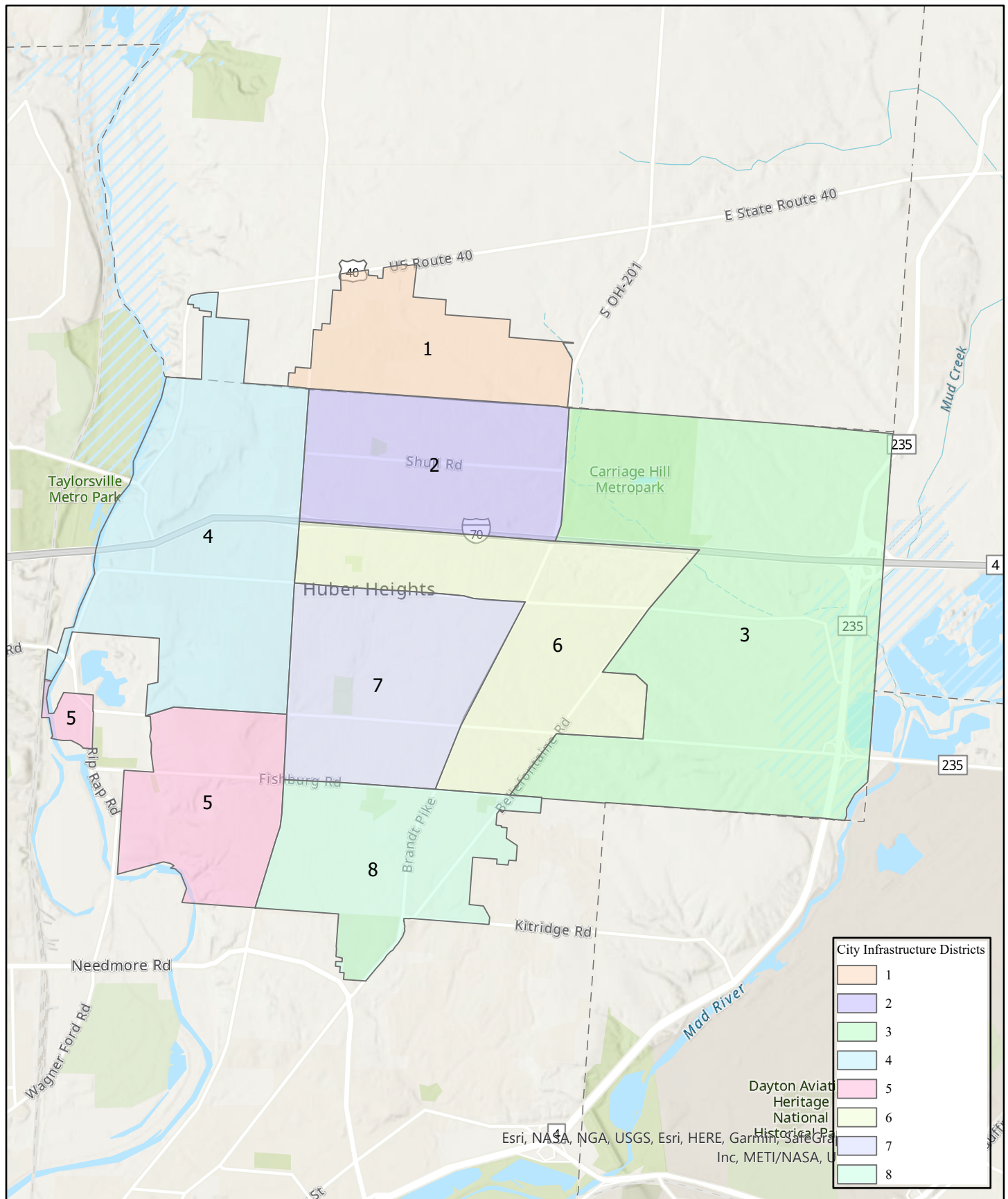
The city's roadway network provides critical access for people and goods to reach homes and businesses throughout the city. These residences and businesses rely on the roadway network to reach points inside and outside the city limits. The primary roadways that carry people and goods to points beyond the city limits are I-70, SR 202 and SR 201. A roadway segment was allocated to an Infrastructure District if it is located within that District or provided a critical, convenient link between residences and businesses within the district to the I-70, SR 202 or SR 201 corridors.

Clarifications

- > The Ohio Department of Transportation owns and maintains I-70 including grade separated interchanges with State Route 202 (SR 202) and State Route 201 (SR 201). This facility was not allocated to any of the Infrastructure Districts as it is not maintained by the city.
- > US 40 and SR 4 are also significant roadway assets in the region. While the city borders on these facilities, they are not maintained by the city and were not included in the study beyond being destinations beyond the city limits that are connected to the city's primary corridors.

Figure 1

Huber Heights Infrastructure Districts



Water Infrastructure

The city's supply of potable water for residential and commercial use and fire protection throughout the city is a very interconnected system. The entire city relies on the water treatment plant to provide safe water. The entire city also relies on elevated storage tanks, booster stations, and a network of pipes 6" in diameter and larger that provide appropriate redundancy and pressure balancing to all areas of the city.

A water infrastructure asset was allocated to an Infrastructure District if it is located in that district or is a part of the water treatment or pressure-providing system for that district. All water mains 6" in diameter and larger are included in the pressure-providing system and are therefore included in each of the Infrastructure Districts. A map of all water assets is included in Appendix X. See the table of contents for a listing of the exhibits that include maps for water assets in each of the Infrastructure Districts.

Sanitary Sewer Infrastructure

The city's sanitary sewer network includes all wastewater collection infrastructure from the individual residences, businesses and facilities to the lines that leave the city carrying sewage to the Tri-Cities Northern Regional Wastewater Authority or Clark County treatment plants. The system includes gravity sewer conduits, manholes, pump stations and sanitary sewer force mains.

A sanitary sewer infrastructure asset was allocated to an Infrastructure District if it is located in that district or is a downstream asset moving flows from the district towards the outfalls from the city. The vast majority of sanitary sewer infrastructure in the city carries flows to the Tri-Cities Northern Regional Wastewater Authority treatment plant located at 3777 Needmore Rd, Dayton, OH 45424, just outside the city's southwestern corporation limits. A small portion of the city's eastern sanitary sewer system, providing service to the Centre Point 70 development and businesses along New Carlisle Pike south of I-70, leaves the city to the east to enter the Clark County system just north of the Artz and SR 235 intersection.

Stormwater Infrastructure

The city's stormwater infrastructure network includes all publicly maintained open and closed drainage systems that carry rainwater from properties within the city limits to tributaries of the Great Miami River and Mad River as they exit the city corporation limits. The city's storm water system relies entirely on gravity flows and includes catch basins, manholes, storm sewer conduits, open channels and culverts within public right of way.

A storm sewer infrastructure asset was allocated to an Infrastructure District if it is located in that district or is a downstream asset moving flows from the district towards the outfalls from the city. Culverts carrying water under city owned and maintained roadways were included in the infrastructure asset assignments for Infrastructure Districts that drain to that location.

GIS MAP INTERFACE

The volume of infrastructure assets included in the city's dataset suggests that map-based presentations and management of the data will be the most effective. The LJB team applied additional data fields to the city's existing GIS information to allocate each asset to one or more Infrastructure Districts. This approach will allow the city to re-integrate the data into their existing system and apply similar approaches to modified or additional elements that are added. It will also allow city staff to query and produce maps and datasets according to the various District assignments.

Coding of Infrastructure Assets

Utility assets were assigned a code, which is viewable in the asset attribute field “Infrastructure Support District”, identifying the infrastructure district of origin. For road, storm and sanitary sewer assets, lines of continuity were followed until the utility assets exited the city boundary or ended at a body of water or processing facility. Codes were assigned to each segment in that path relating to the infrastructure district of origin, providing a clear path of asset origin to termination as defined earlier.

Query Process

To query assets, LJB first sorted by infrastructure district of origin by selecting the corresponding value from the “Infrastructure Support District” attribute field, thus showing all assets located within the boundaries of the district of interest. Next LJB added additional querying statements to show the path from origin to termination by selecting the corresponding value for “Support District” attribute fields 1-4. When structured correctly, the querying statement selects assets from the infrastructure district of origin and the accompanying assets required to perform a trace from infrastructure district of origin to point of termination.

Queried shapefile layers have been provided for each Infrastructure Support District.

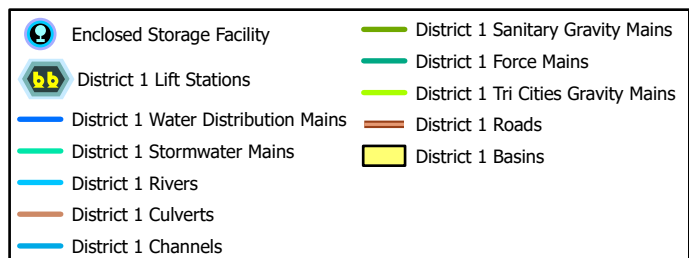
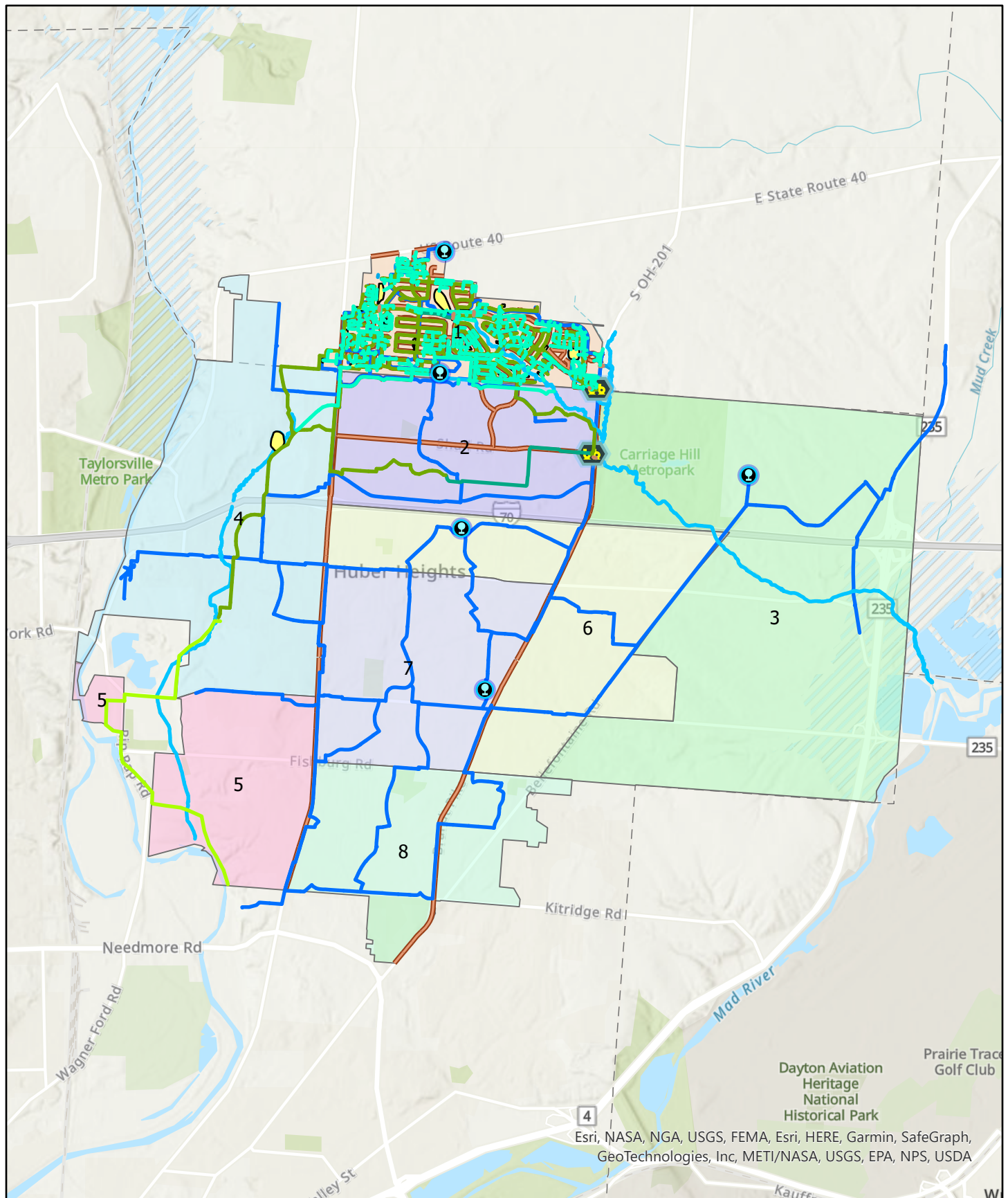
Appendix A

Infrastructure District 1



We think bigger.

Infrastructure District 1 - Overview

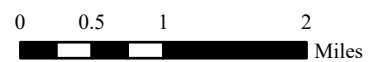
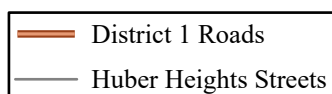
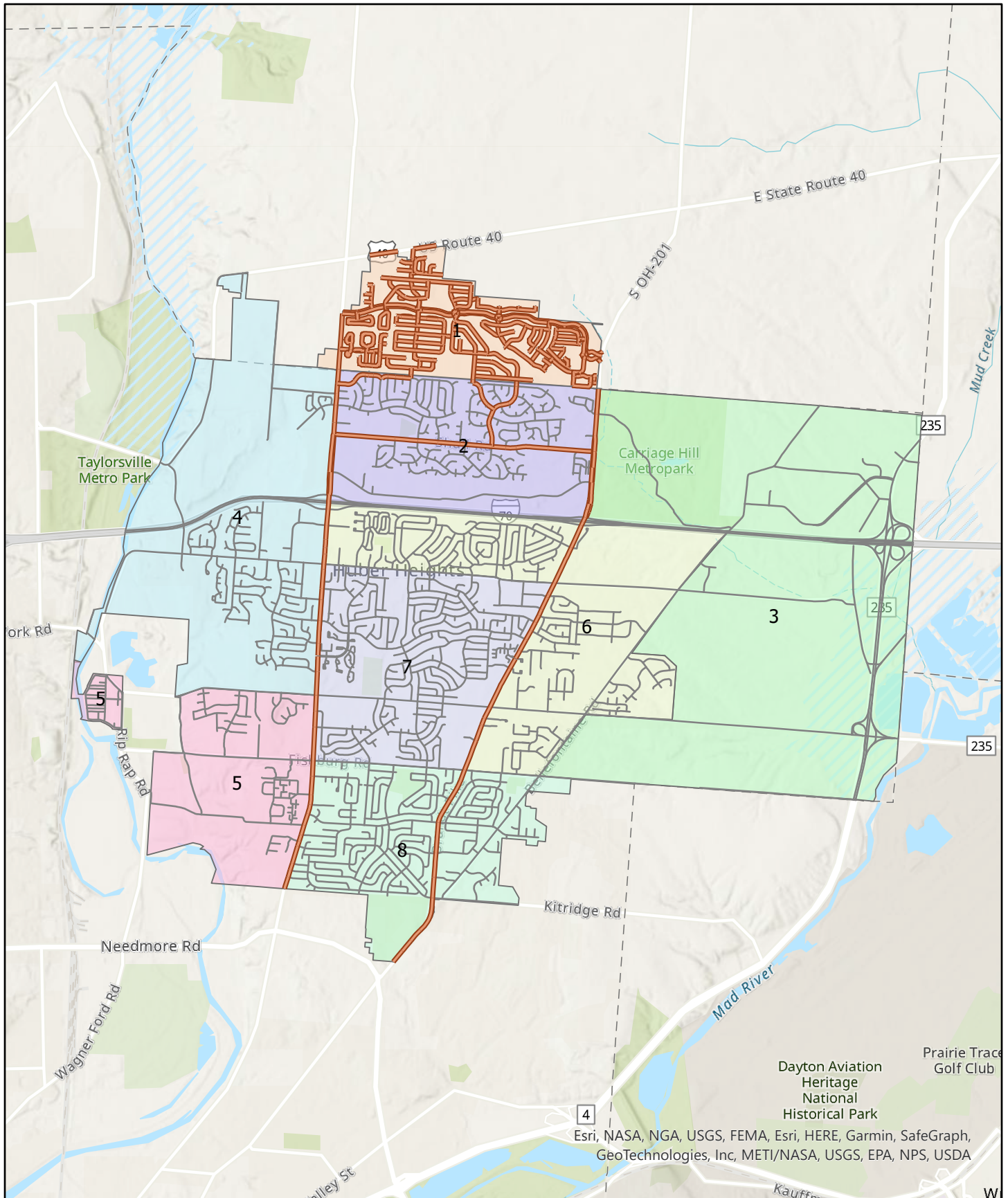


0 0.5 1 2
Miles

1 inch equals 1 miles



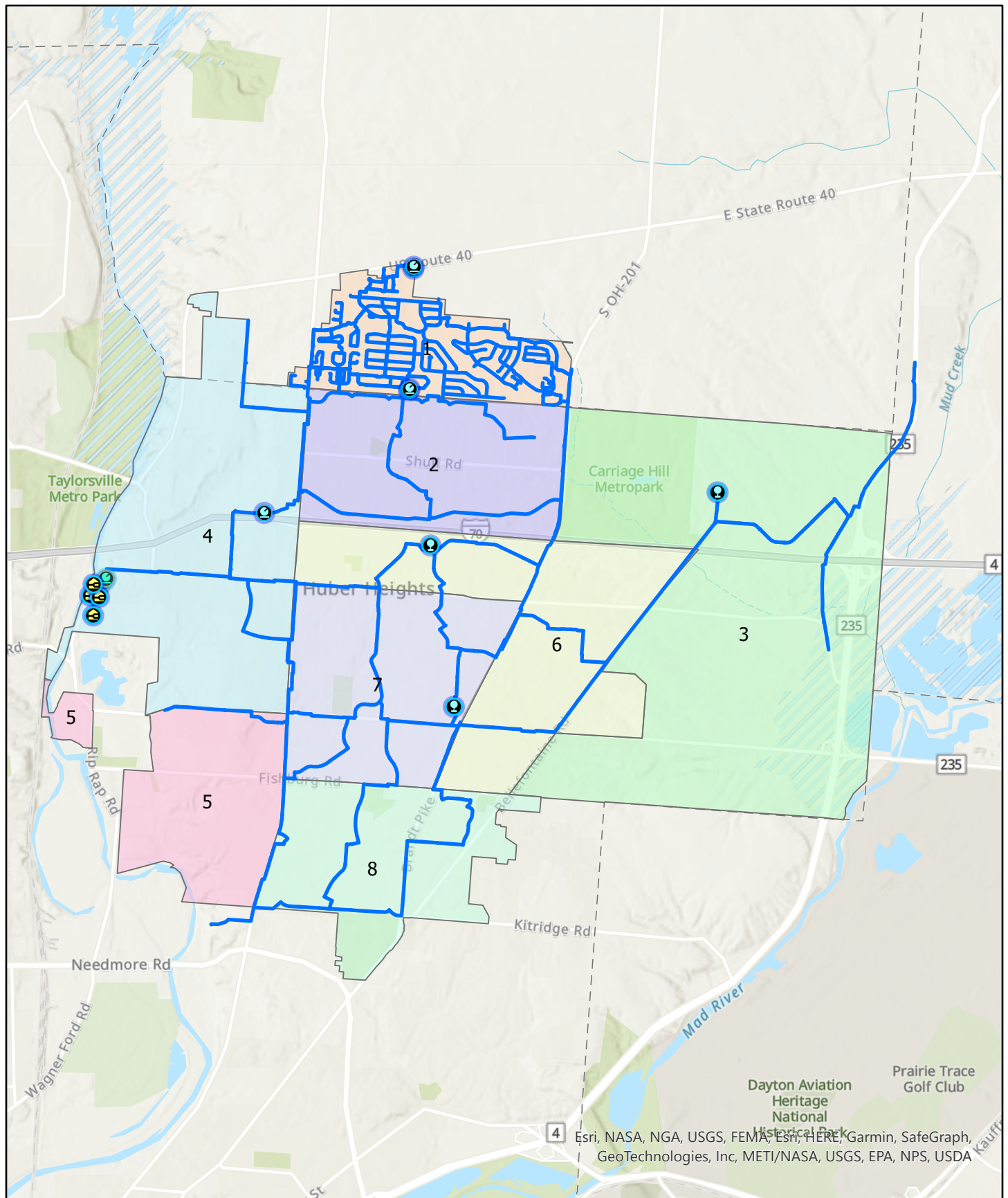
Infrastructure District 1 - Roads



1 inch equals 1 miles



Infrastructure District 1 - Water



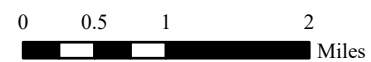
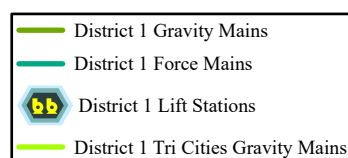
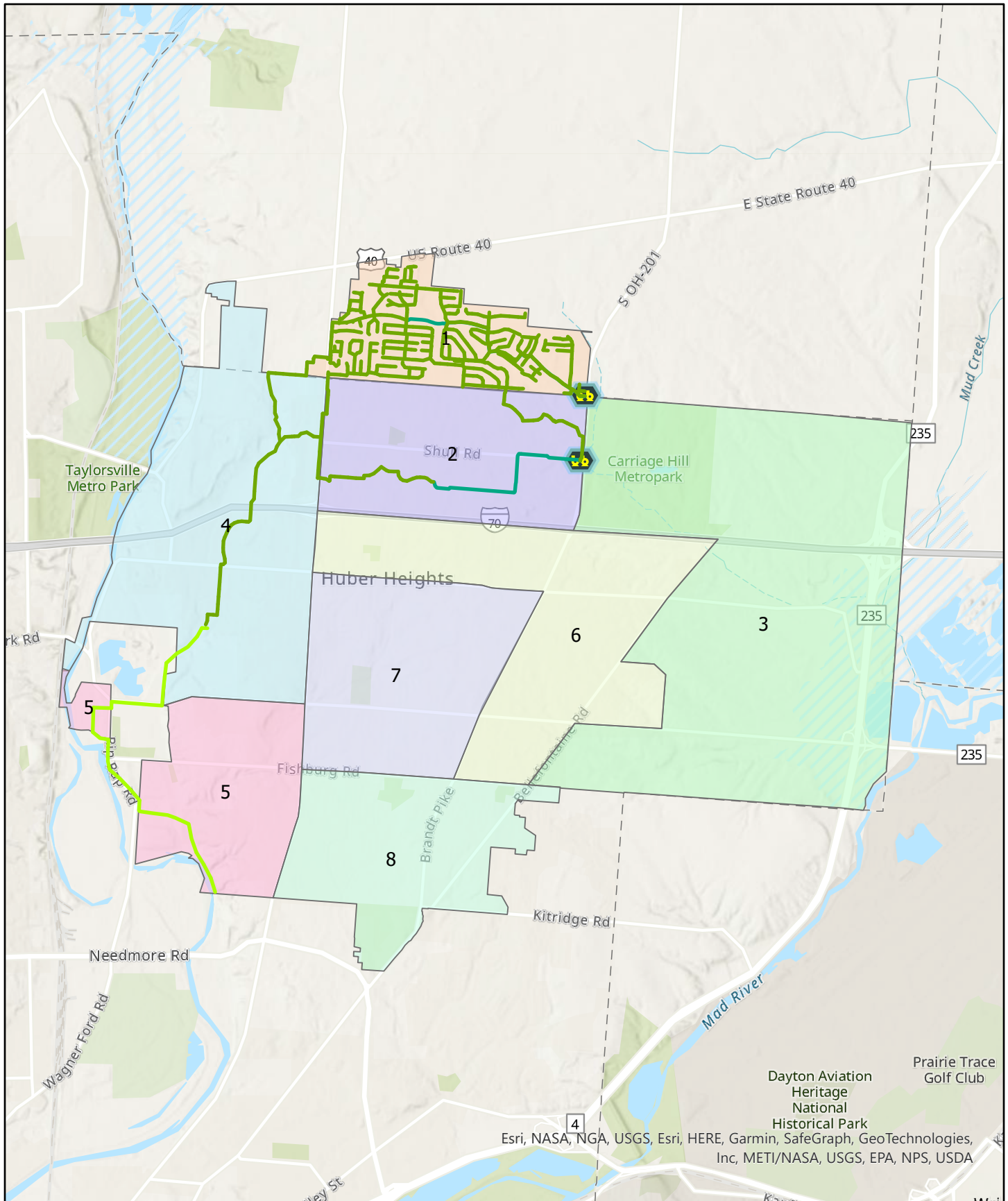
	Enclosed Storage Facility		Pump Station
	Intake		Storage Basin
	Meter Station		Treatment Plant
	Production Well		Water Distribution Mains

0 0.5 1 2 Miles

1 inch equals 1 miles



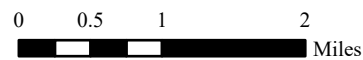
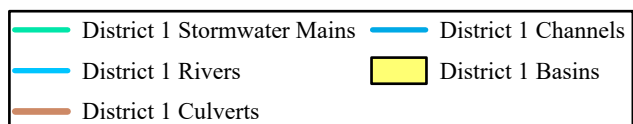
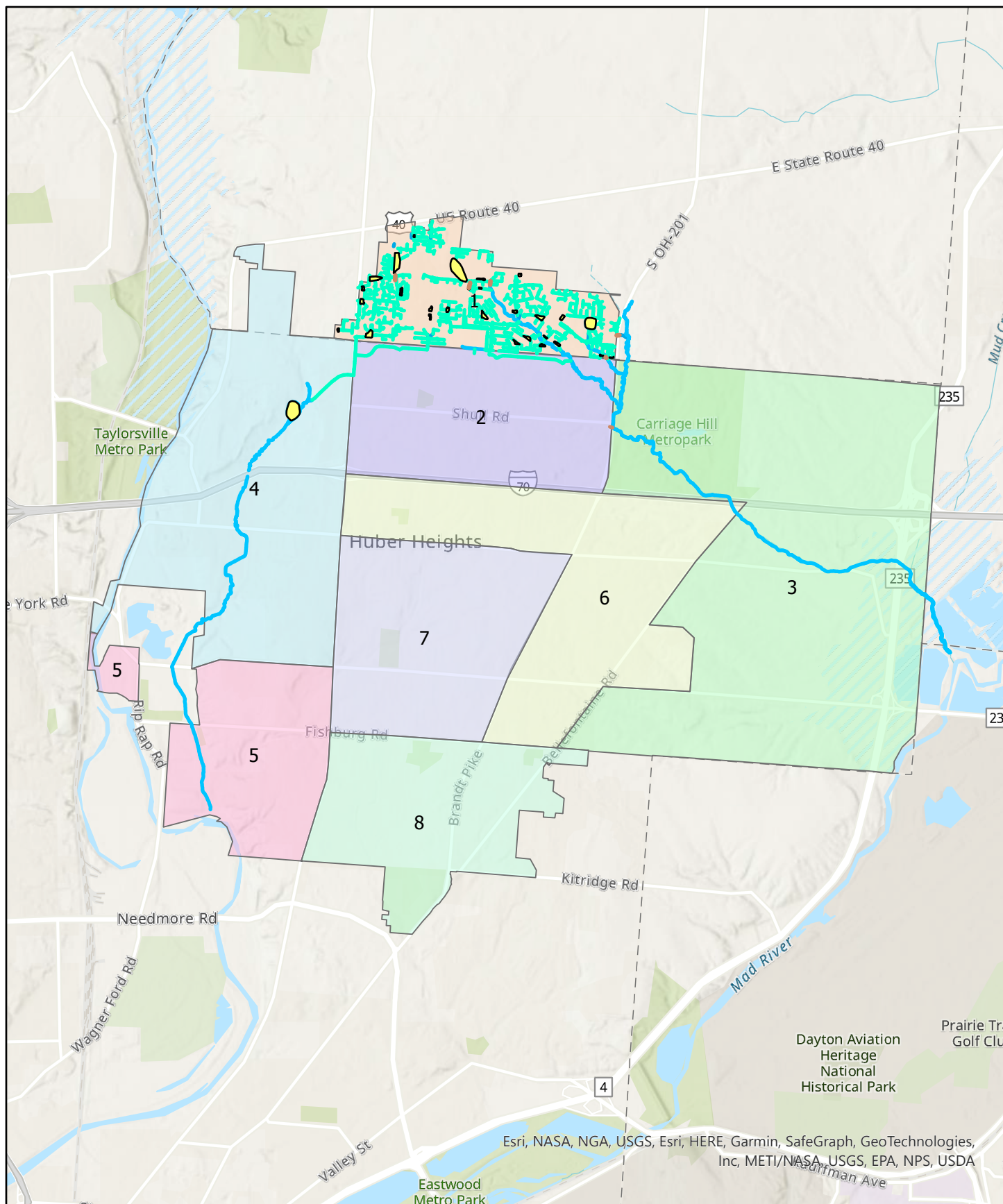
Infrastructure District 1 - Sanitary Sewer



1 inch equals 1 miles



Infrastructure District 1 - Stormwater



1 inch equals 1 miles



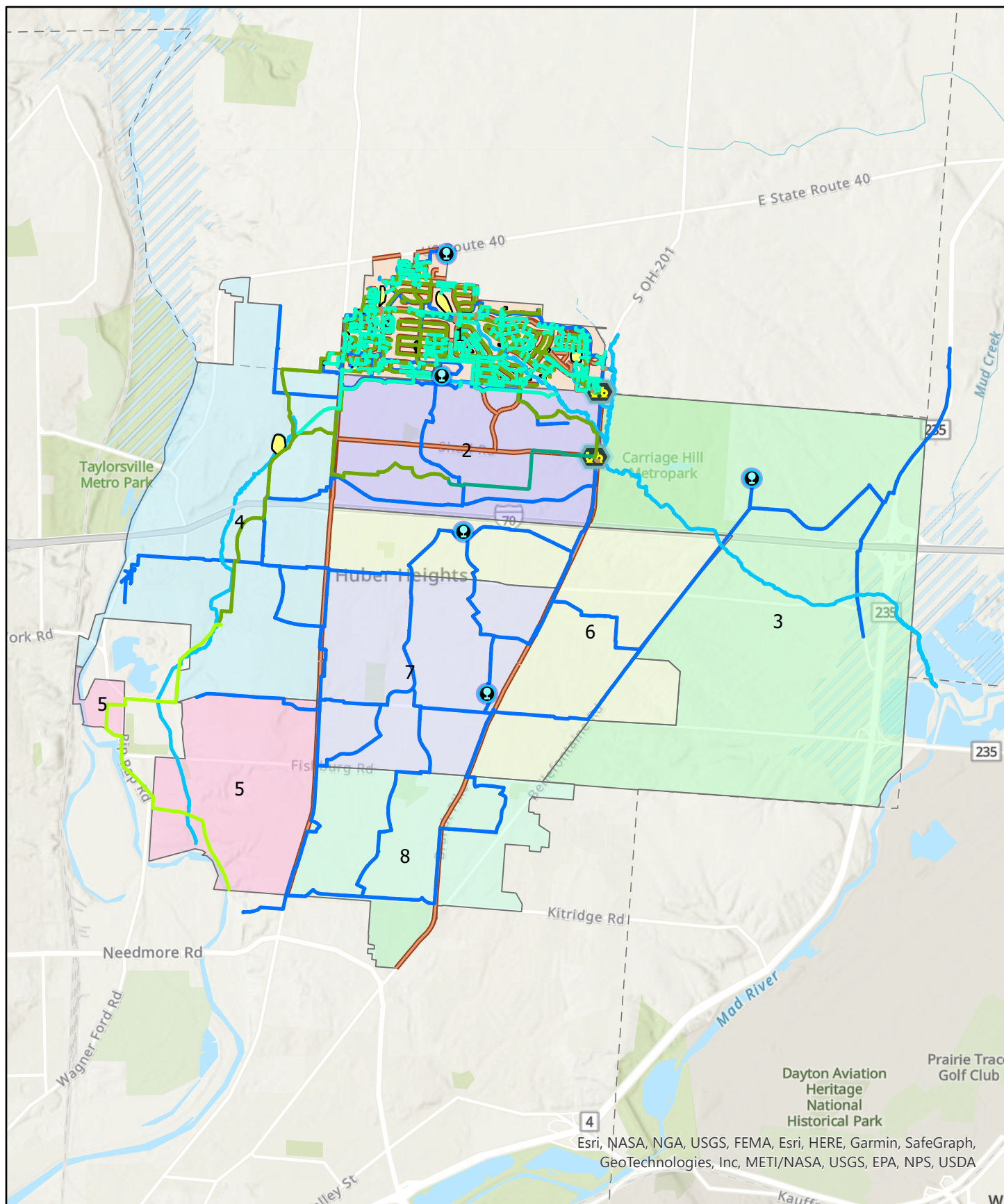
Appendix B

Infrastructure District 2



We think bigger.

Infrastructure District 1 - Overview



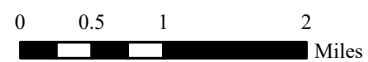
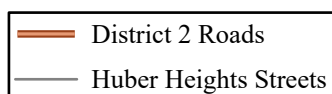
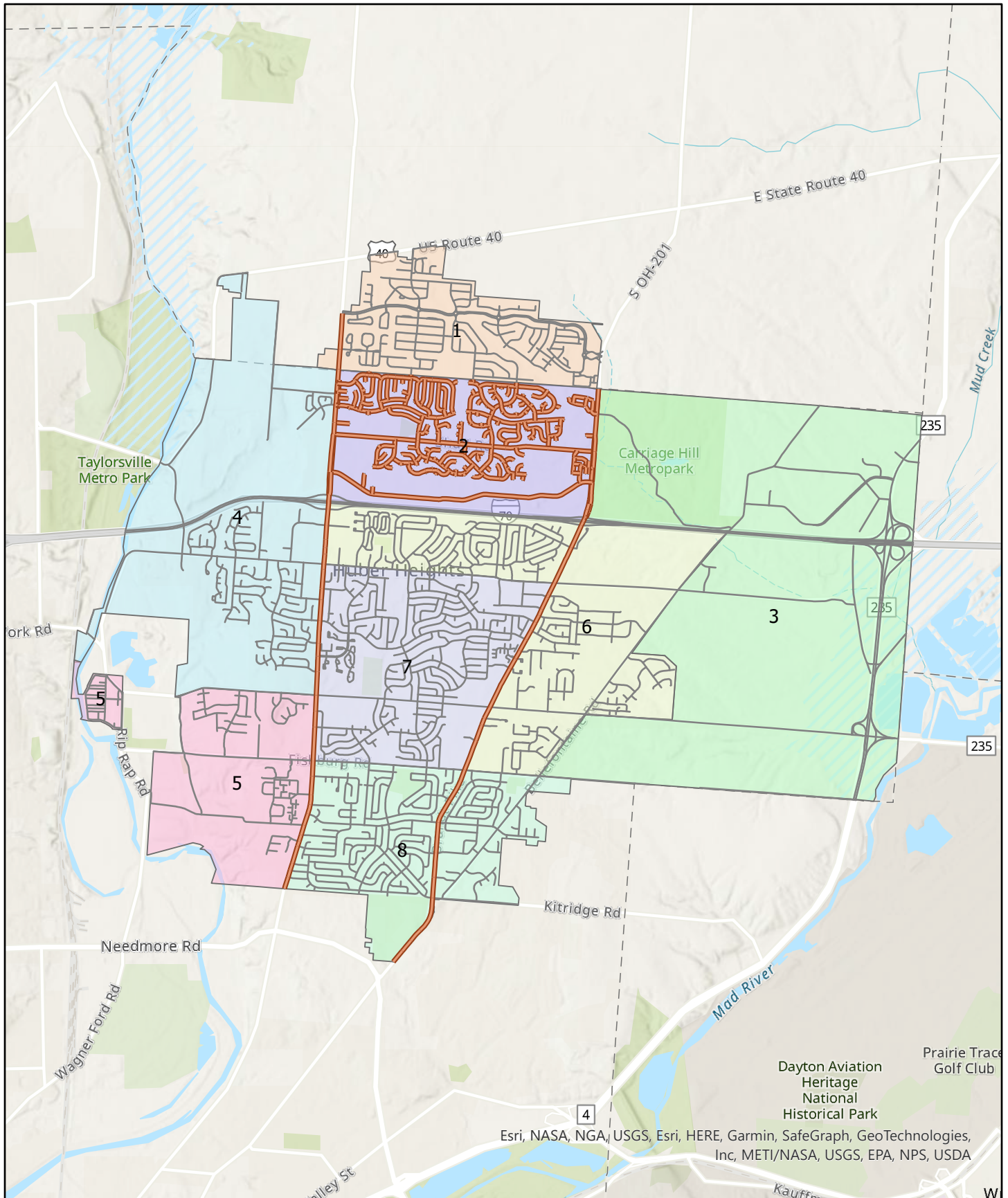
- | | |
|-------------------------------------|-------------------------------------|
| Enclosed Storage Facility | District 1 Sanitary Gravity Mains |
| District 1 Lift Stations | District 1 Force Mains |
| District 1 Water Distribution Mains | District 1 Tri Cities Gravity Mains |
| District 1 Stormwater Mains | District 1 Roads |
| District 1 Rivers | District 1 Basins |
| District 1 Culverts | |
| District 1 Channels | |

0 0.5 1 2
Miles

1 inch equals 1 miles



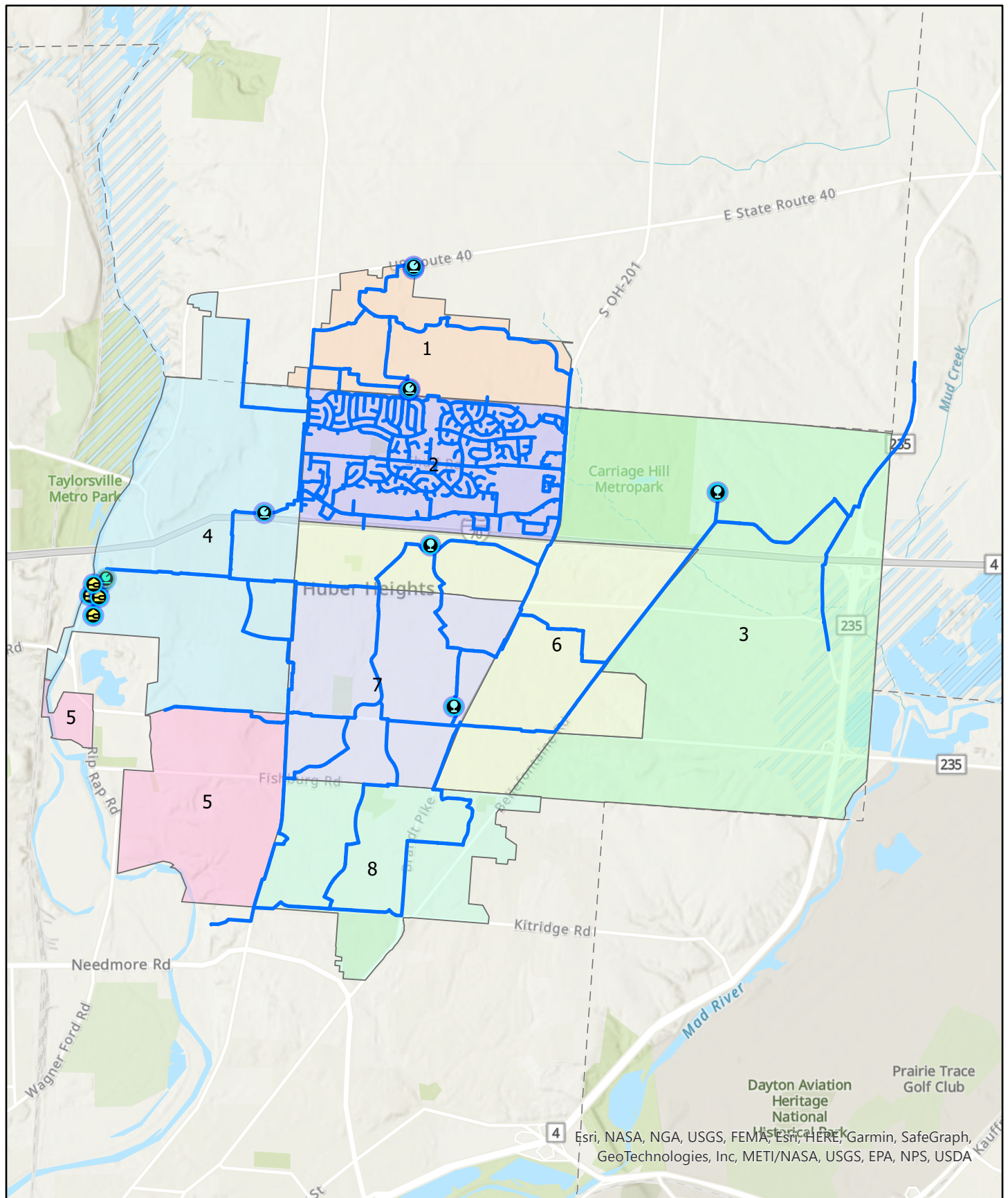
Infrastructure District 2 - Roads



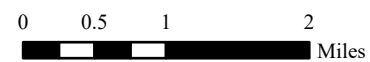
1 inch equals 1 miles



Infrastructure District 2 - Water



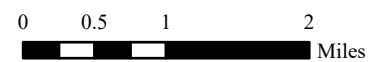
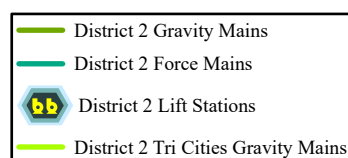
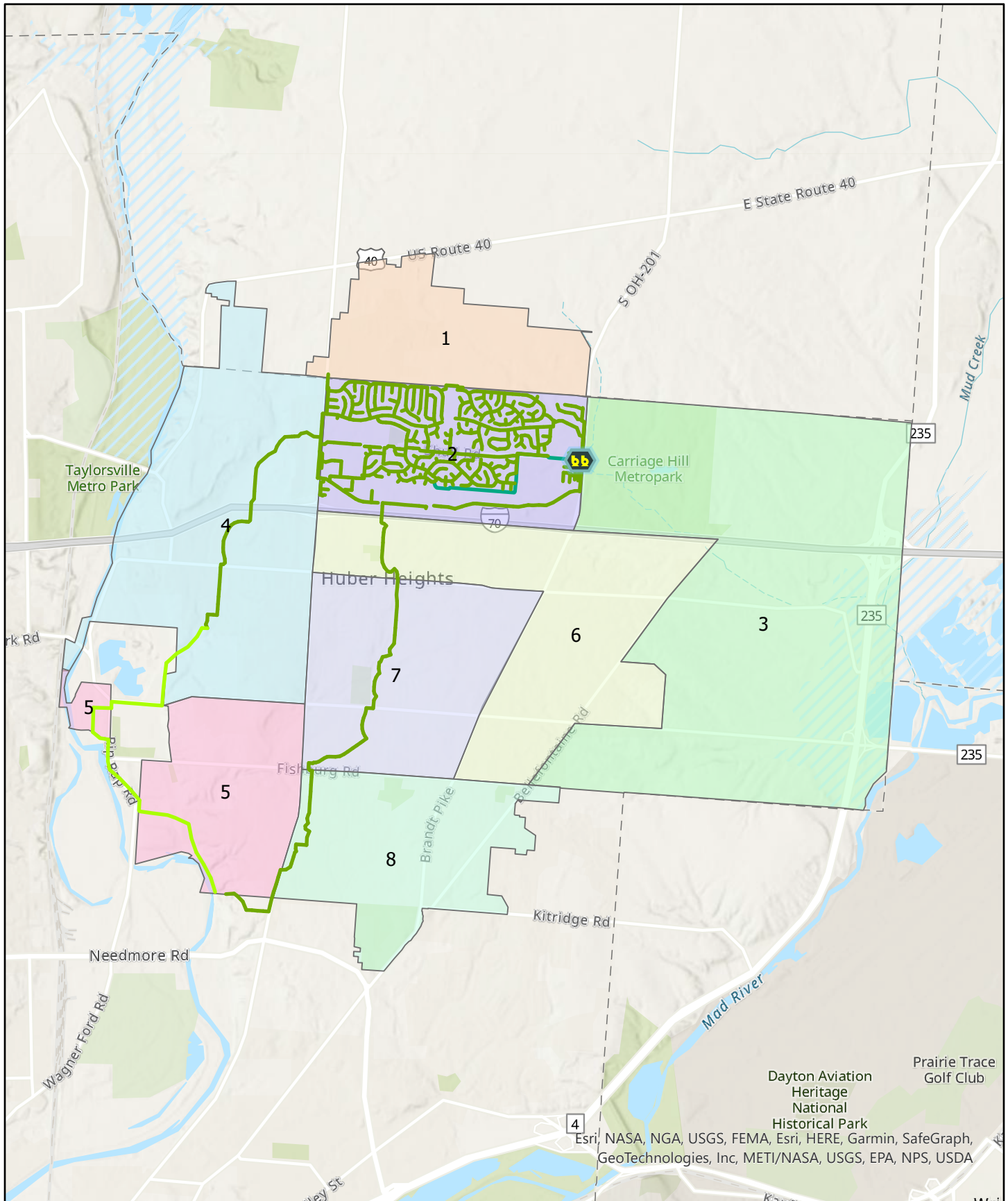
	Enclosed Storage Facility		Pump Station
	Intake		Storage Basin
	Meter Station		Treatment Plant
	Production Well		Water Distribution Mains



1 inch equals 1 miles



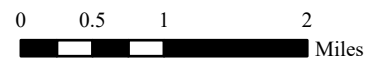
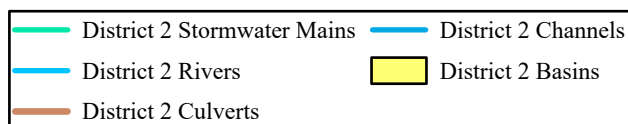
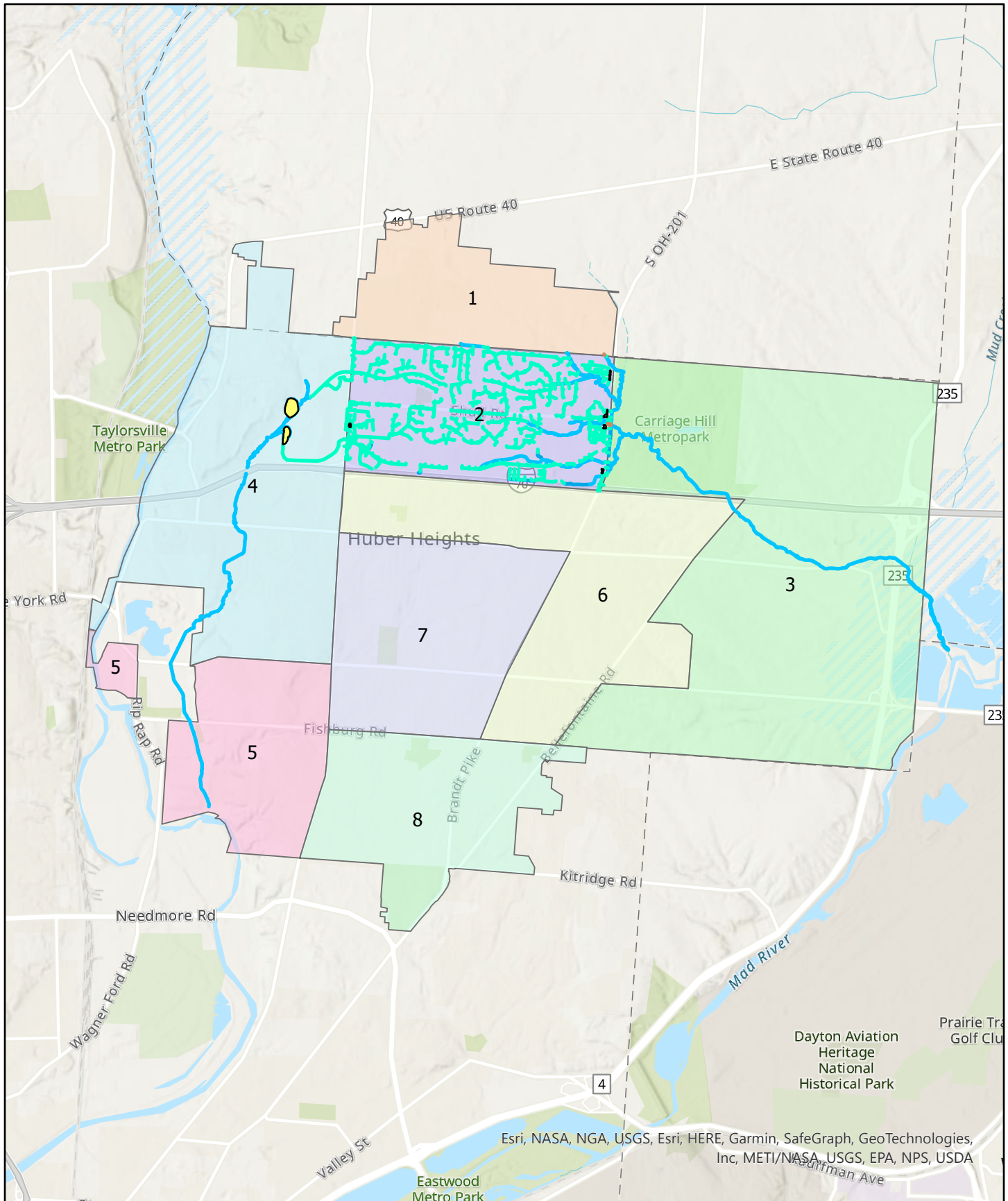
Infrastructure District 2 - Sanitary Sewer



1 inch equals 1 miles



Infrastructure District 2 - Stormwater



1 inch equals 1 miles



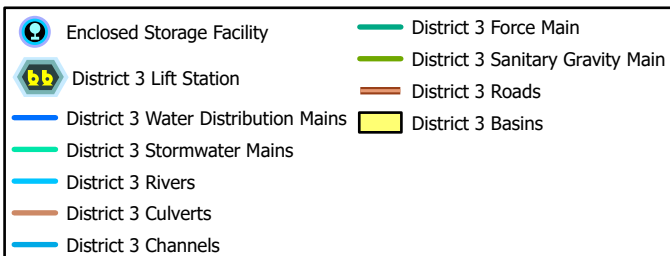
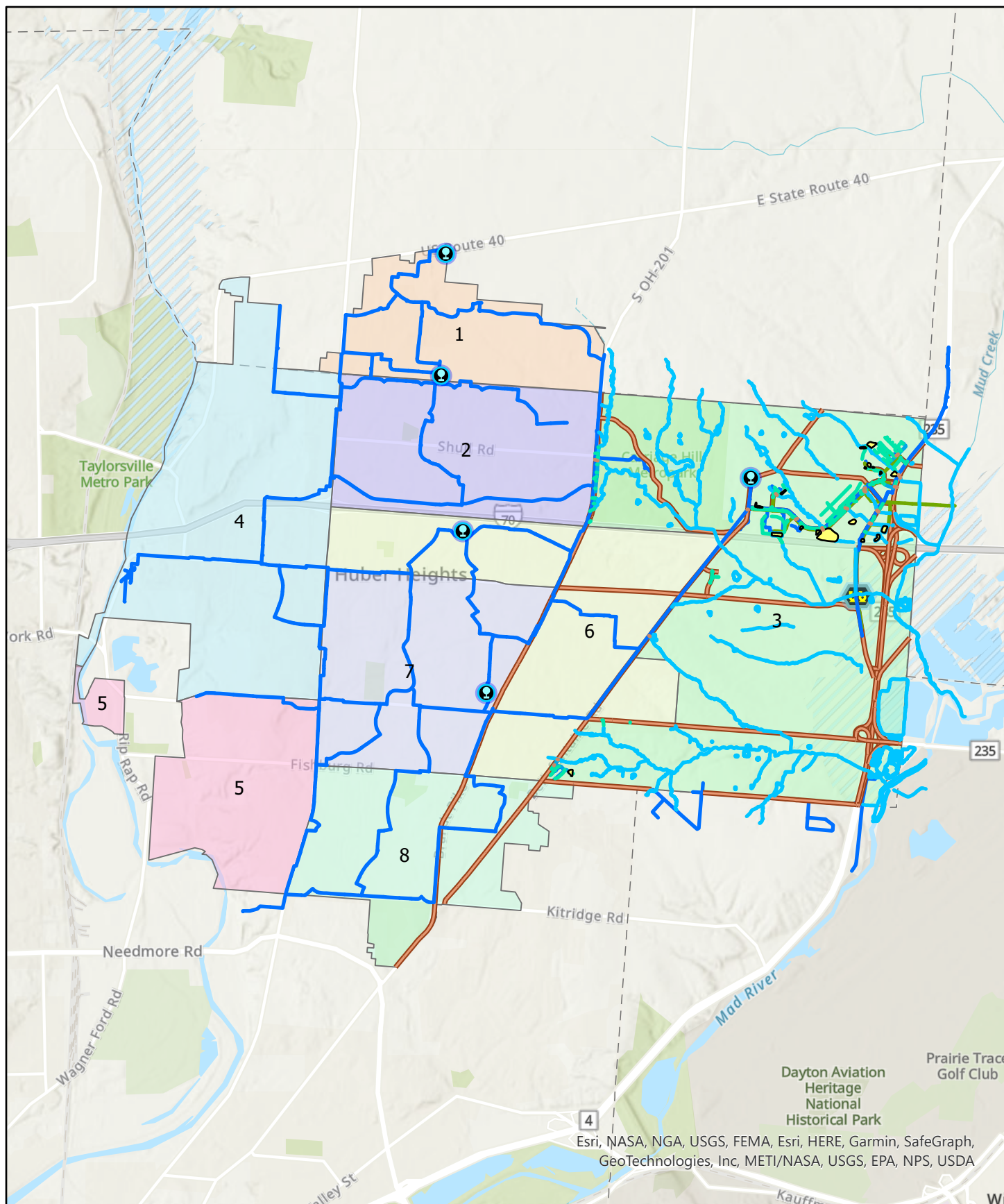
Appendix C

Infrastructure District 3



We think bigger.

Infrastructure District 3 - Overview

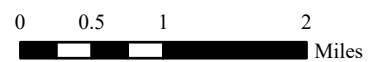
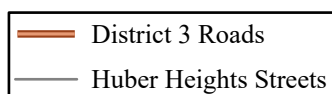
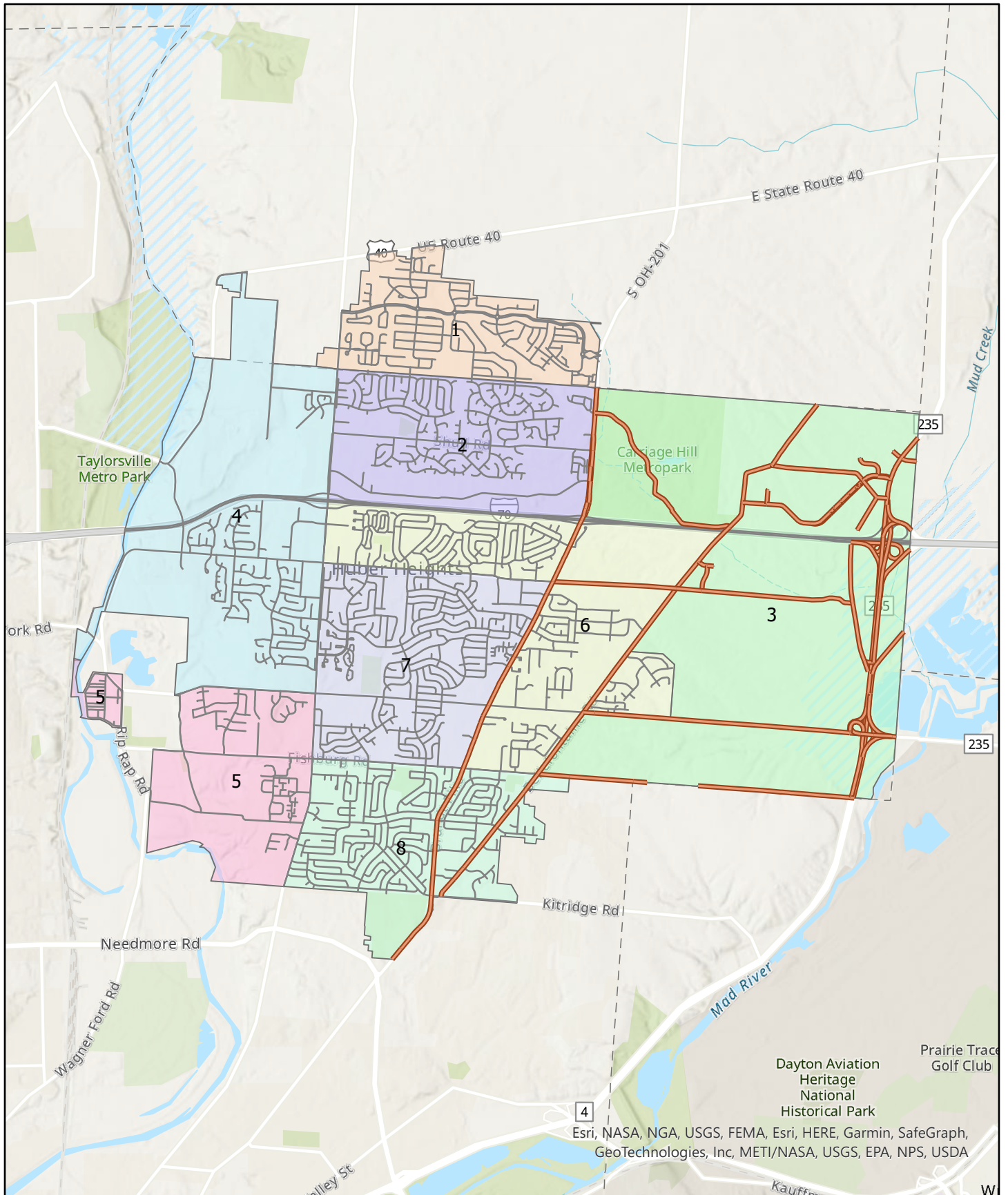


0 0.5 1 2 Miles

1 inch equals 1 miles



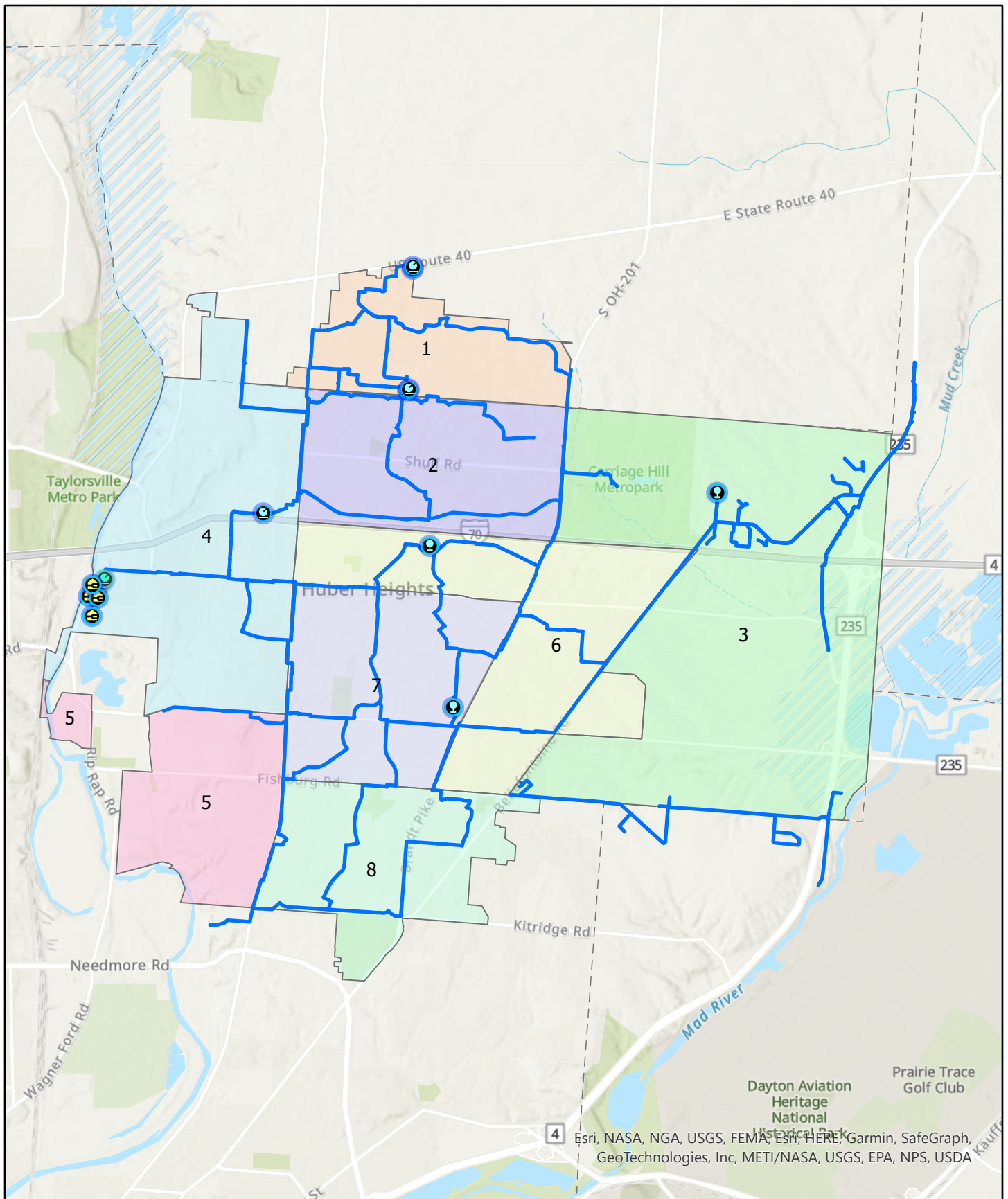
Infrastructure District 3 - Roads



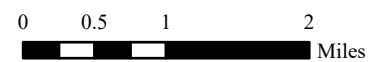
1 inch equals 1 miles



Infrastructure District 3 - Water



	Enclosed Storage Facility		Pump Station
	Intake		Storage Basin
	Meter Station		Treatment Plant
	Production Well		Water Distribution Mains

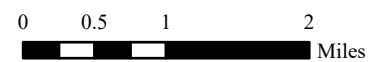
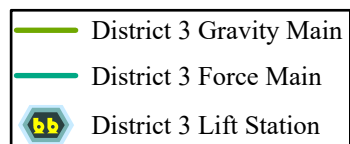
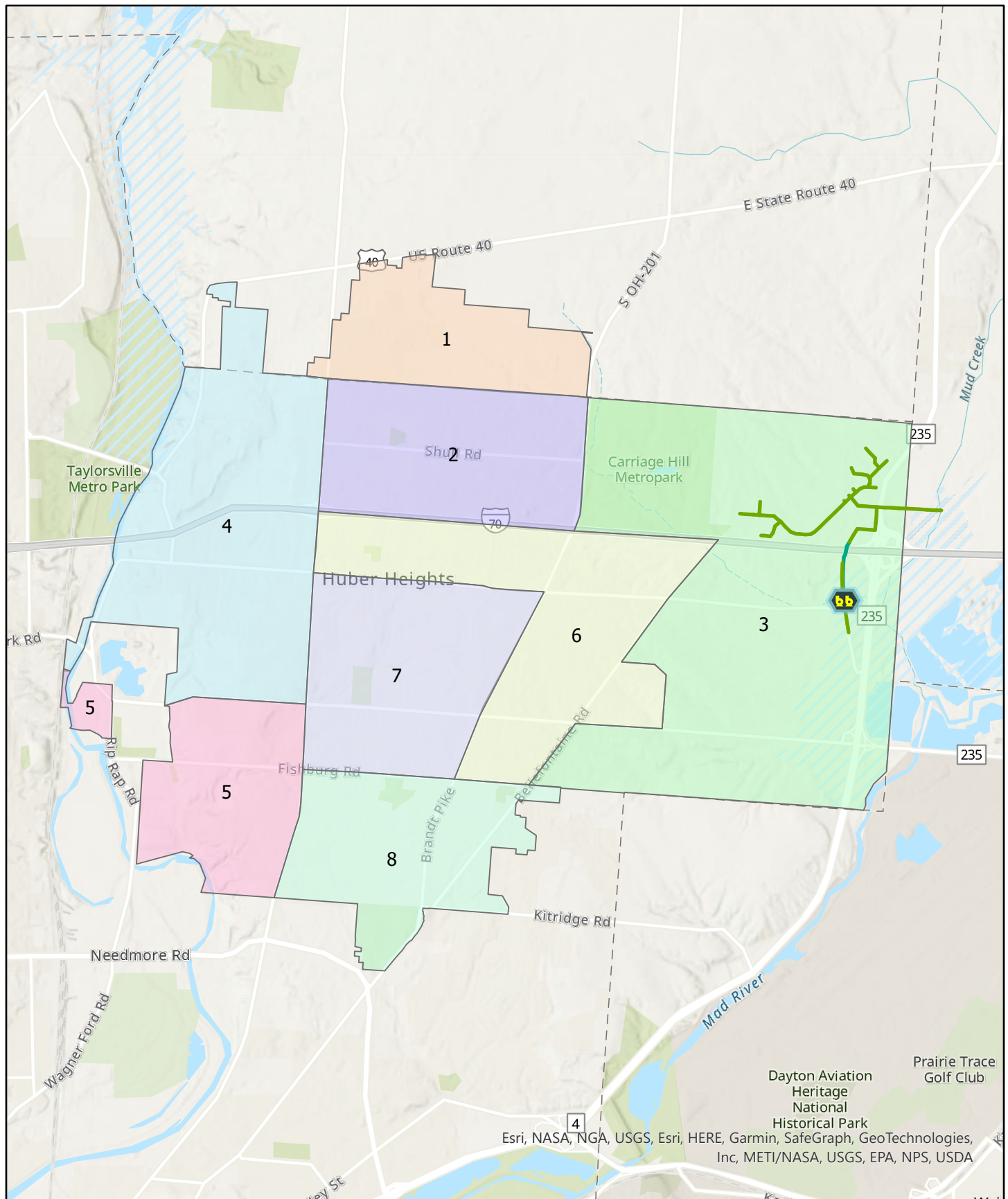


1 inch equals 1 miles



Esri, NASA, NGA, USGS, FEMA, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA

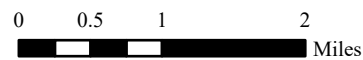
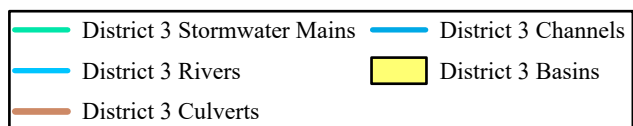
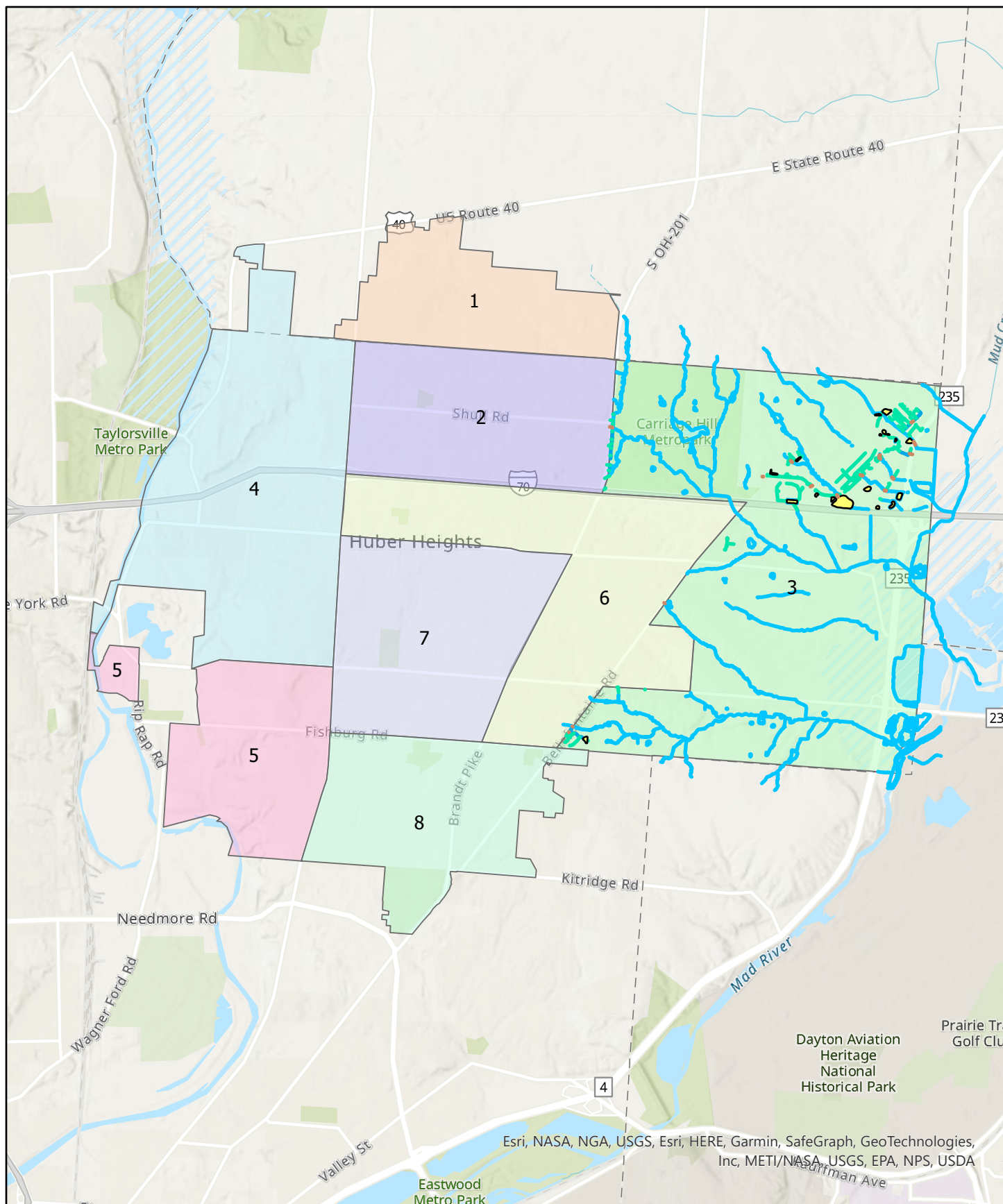
Infrastructure District 3 - Sanitary Sewer



1 inch equals 1 miles



Infrastructure District 3 - Stormwater



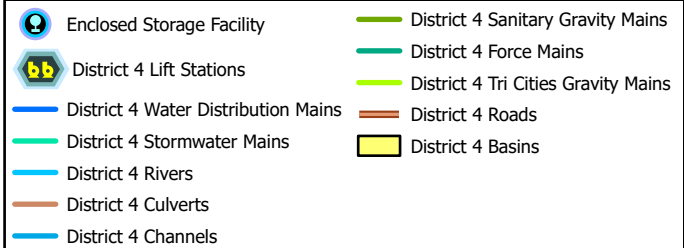
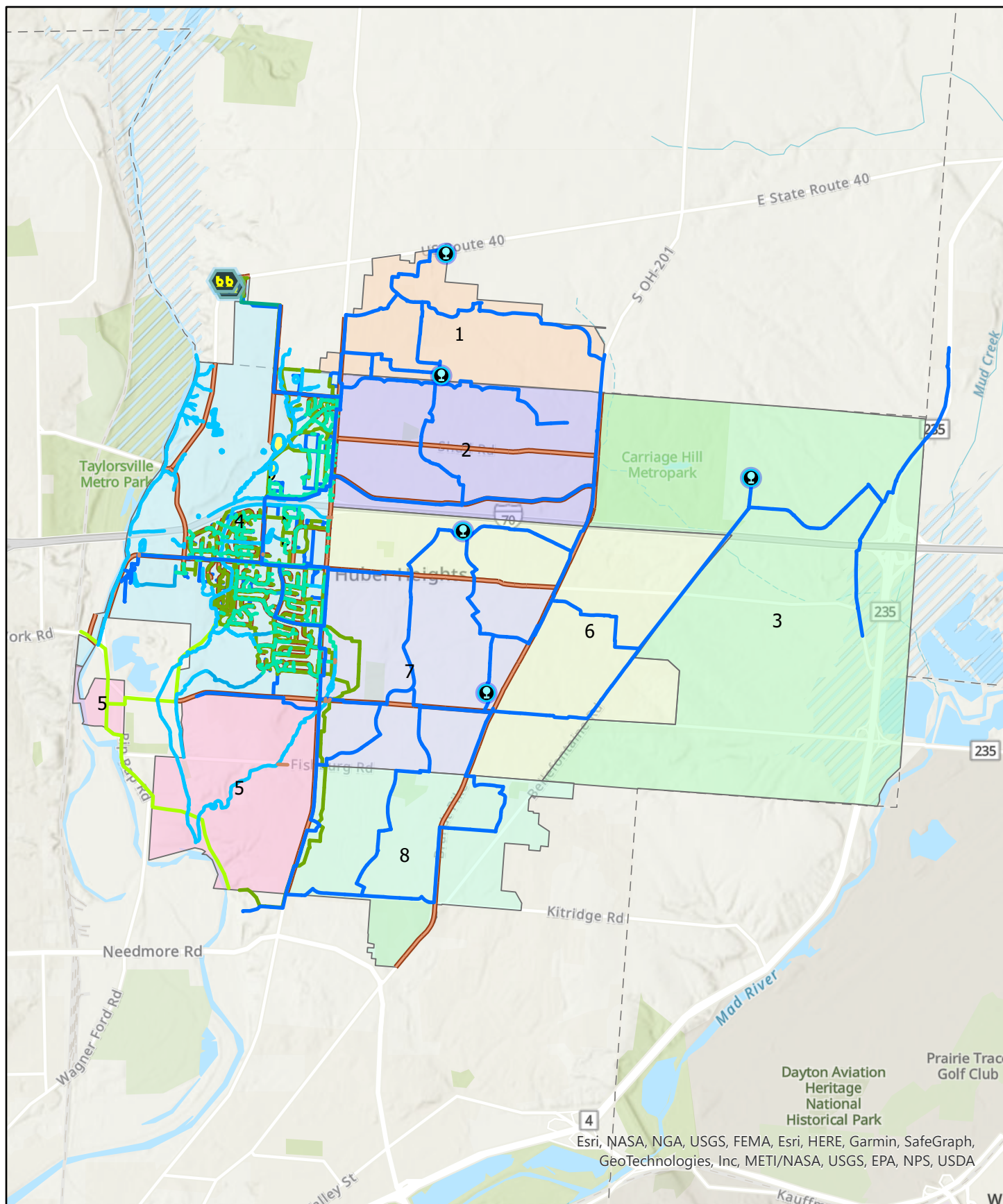
Appendix D

Infrastructure District 4



We think bigger.

Infrastructure District 4 - Overview

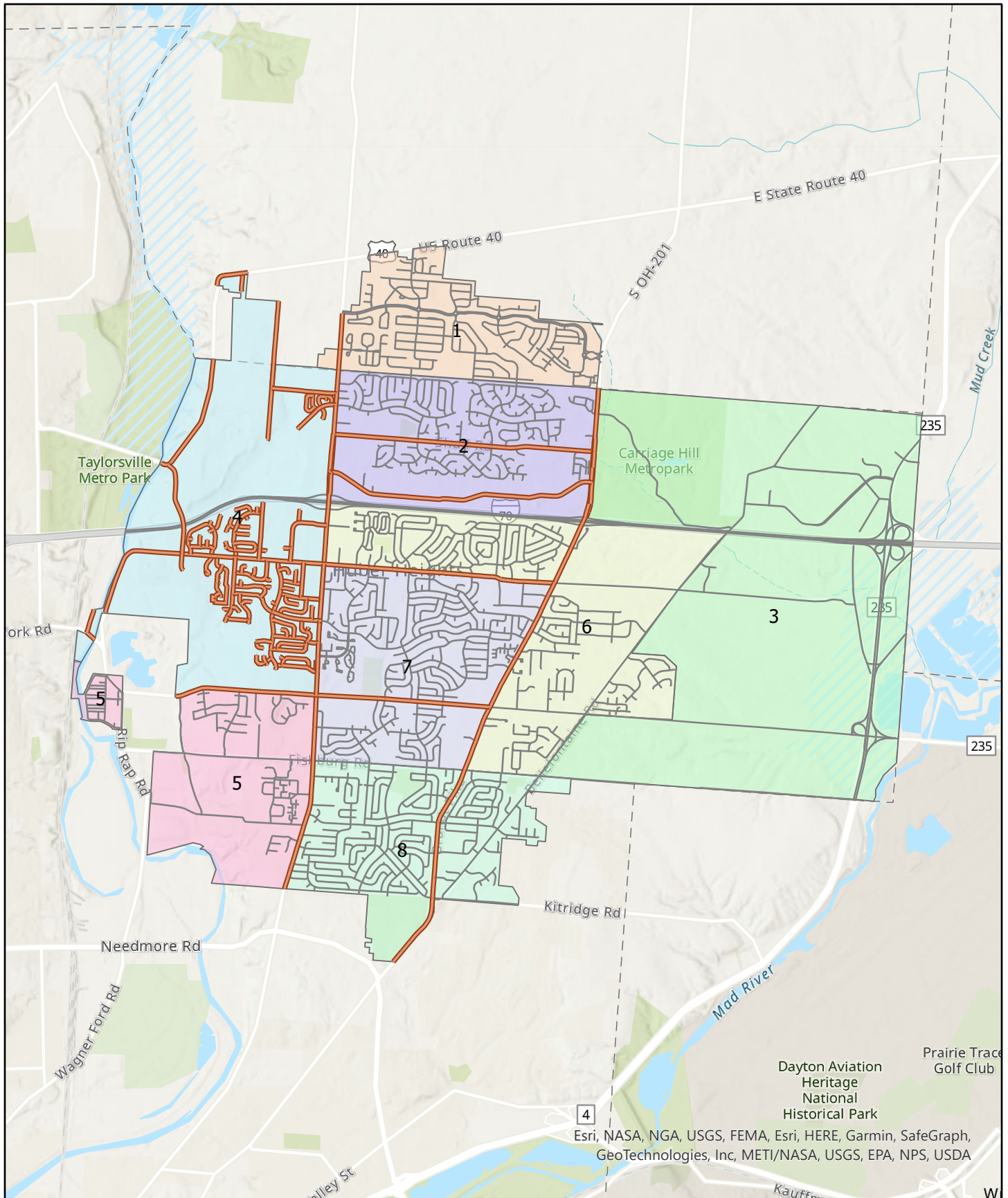


0 0.5 1 2 Miles

1 inch equals 1 miles



Infrastructure District 4 - Roads



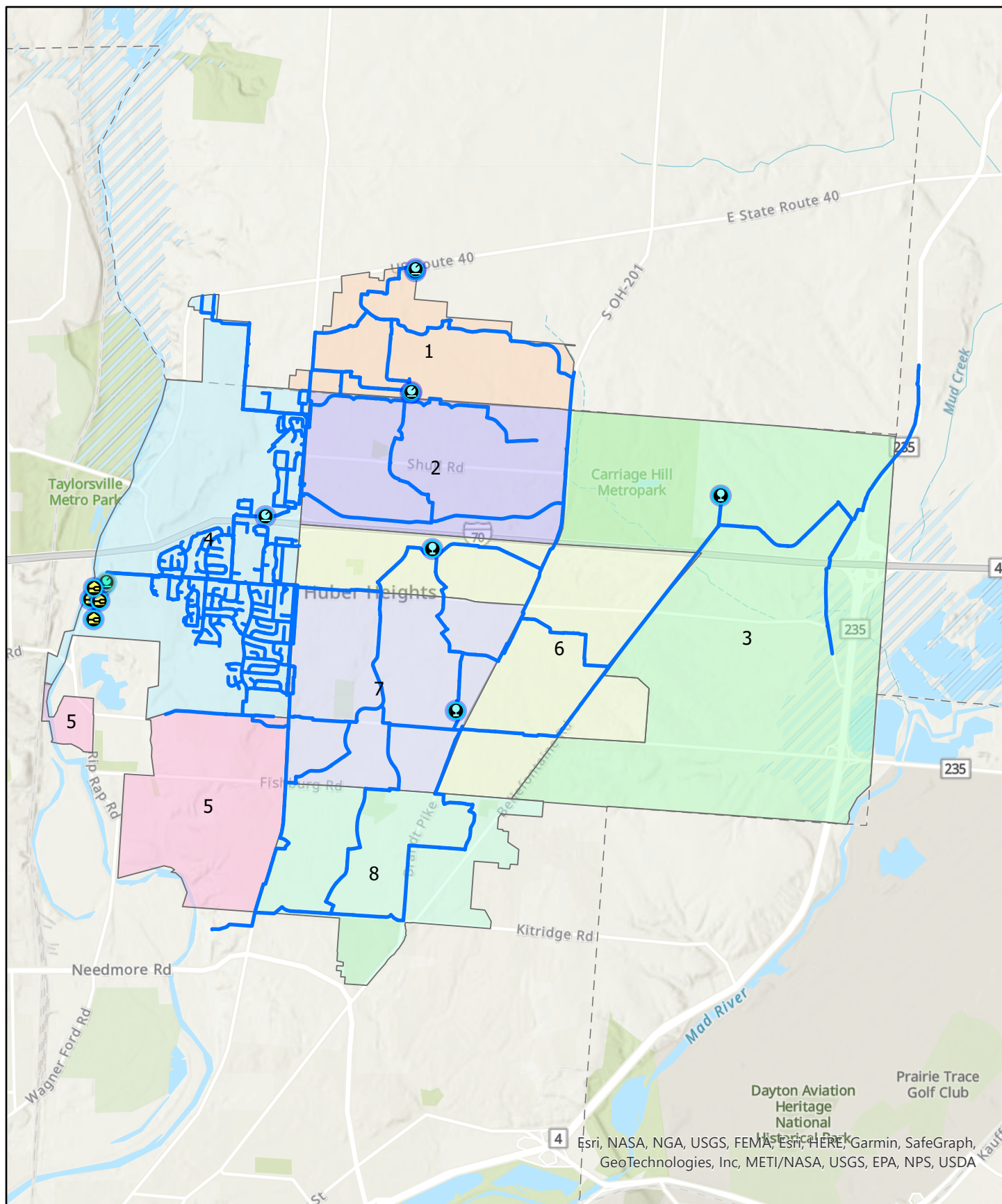
— District 4 Roads
— Huber Heights Streets

0 0.5 1 2
Miles

1 inch equals 1 miles



Infrastructure District 4 - Water



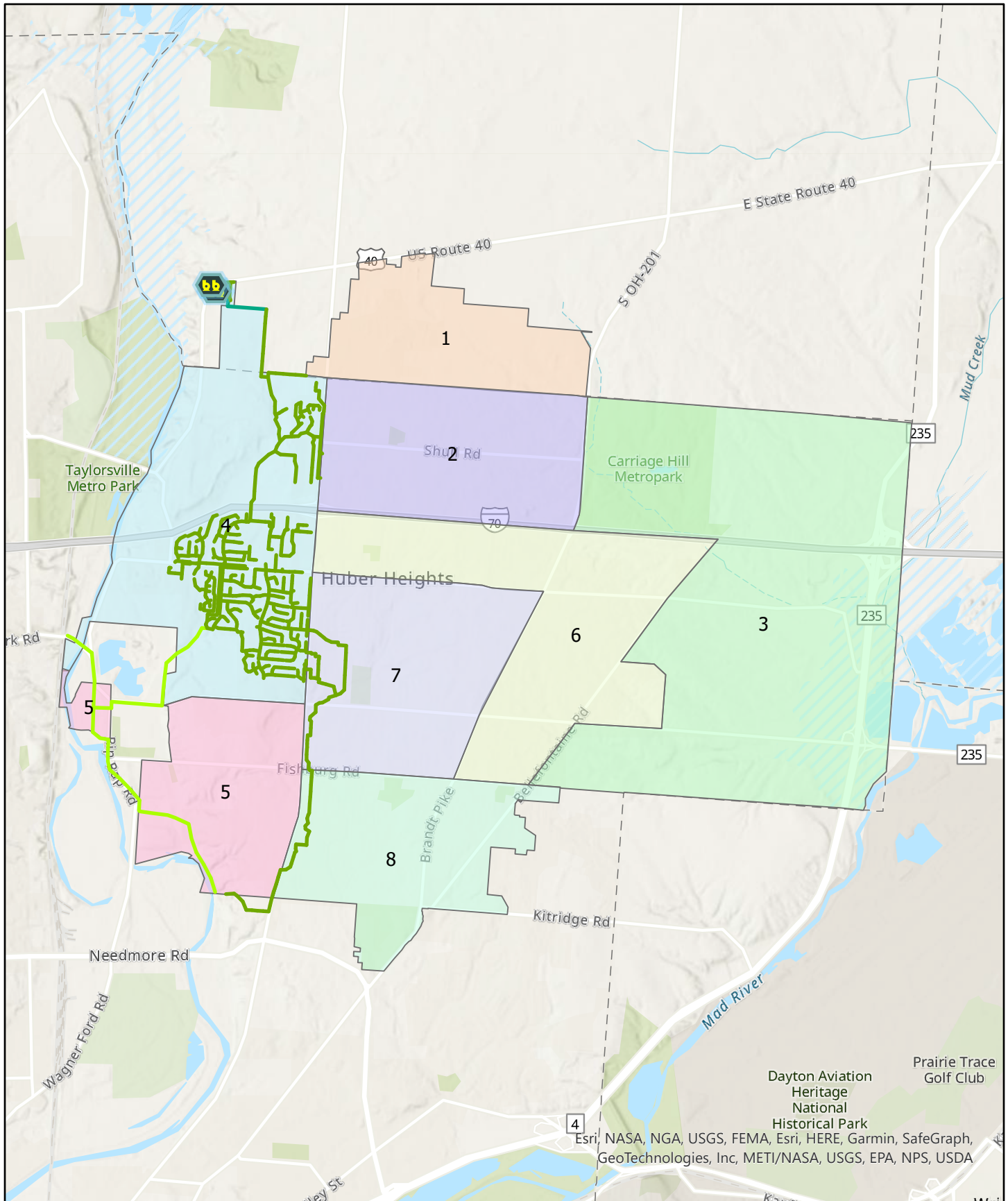
	Enclosed Storage Facility		Pump Station
	Intake		Storage Basin
	Meter Station		Treatment Plant
	Production Well		Water Distribution Mains

0 0.5 1 2 Miles

1 inch equals 1 miles



Infrastructure District 4 - Sanitary Sewer



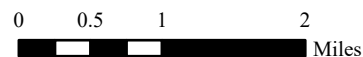
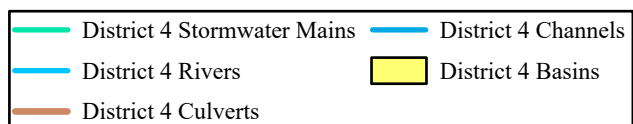
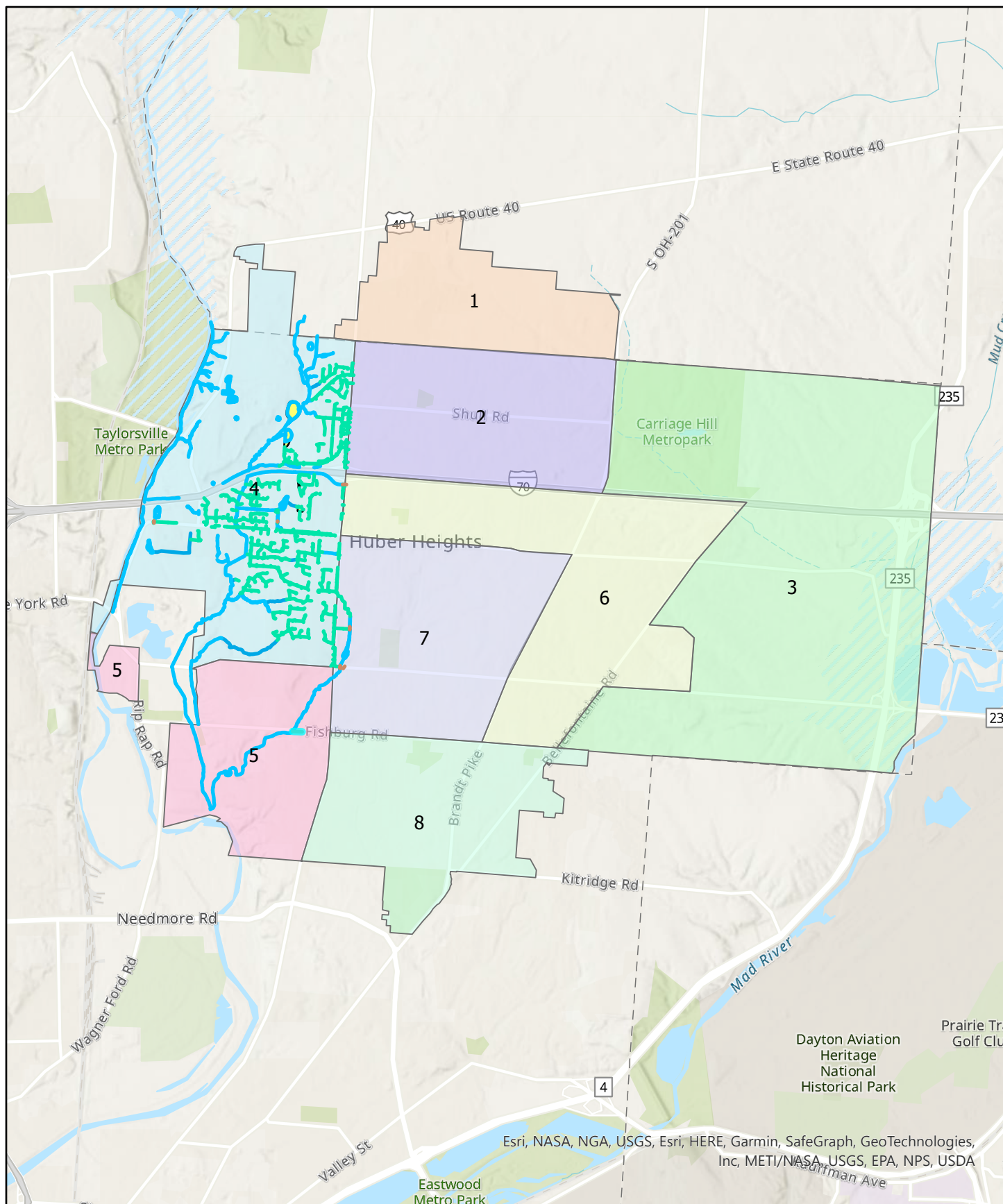
- District 4 Gravity Mains
- District 4 Force Mains
- bb District 4 Lift Stations
- District 4 Tri Cities Gravity Mains

0 0.5 1 2
Miles

1 inch equals 1 miles



Infrastructure District 4 - Stormwater



1 inch equals 1 miles



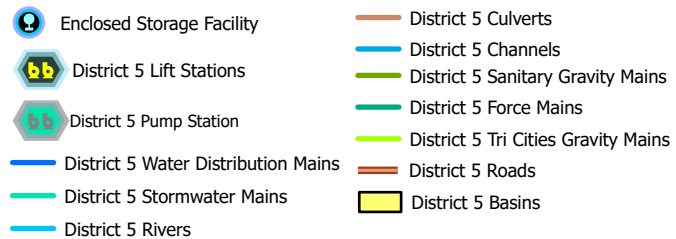
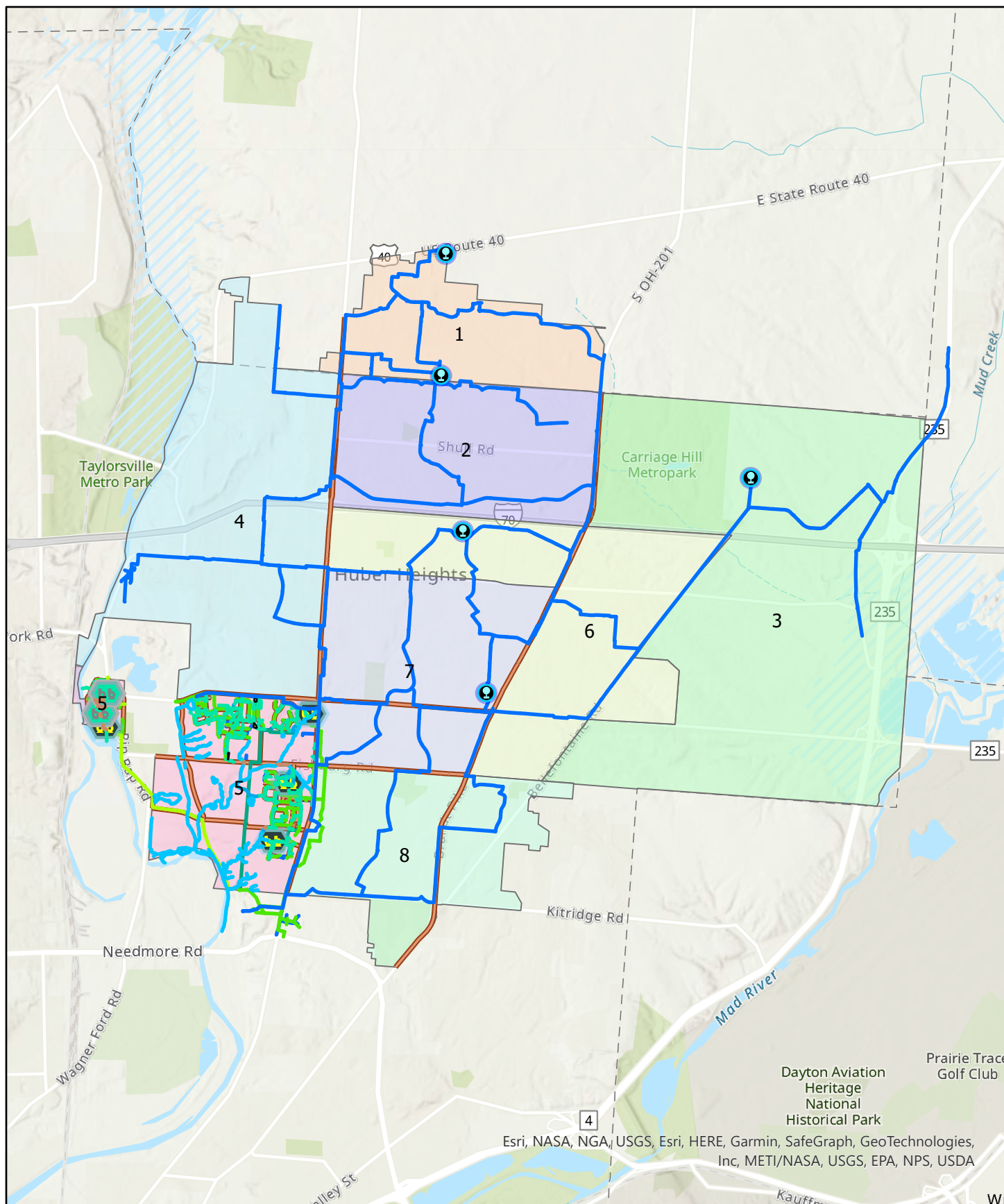
Appendix E

Infrastructure District 5



We think bigger.

Infrastructure District 5 - Overview

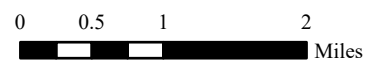
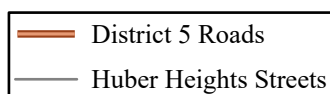
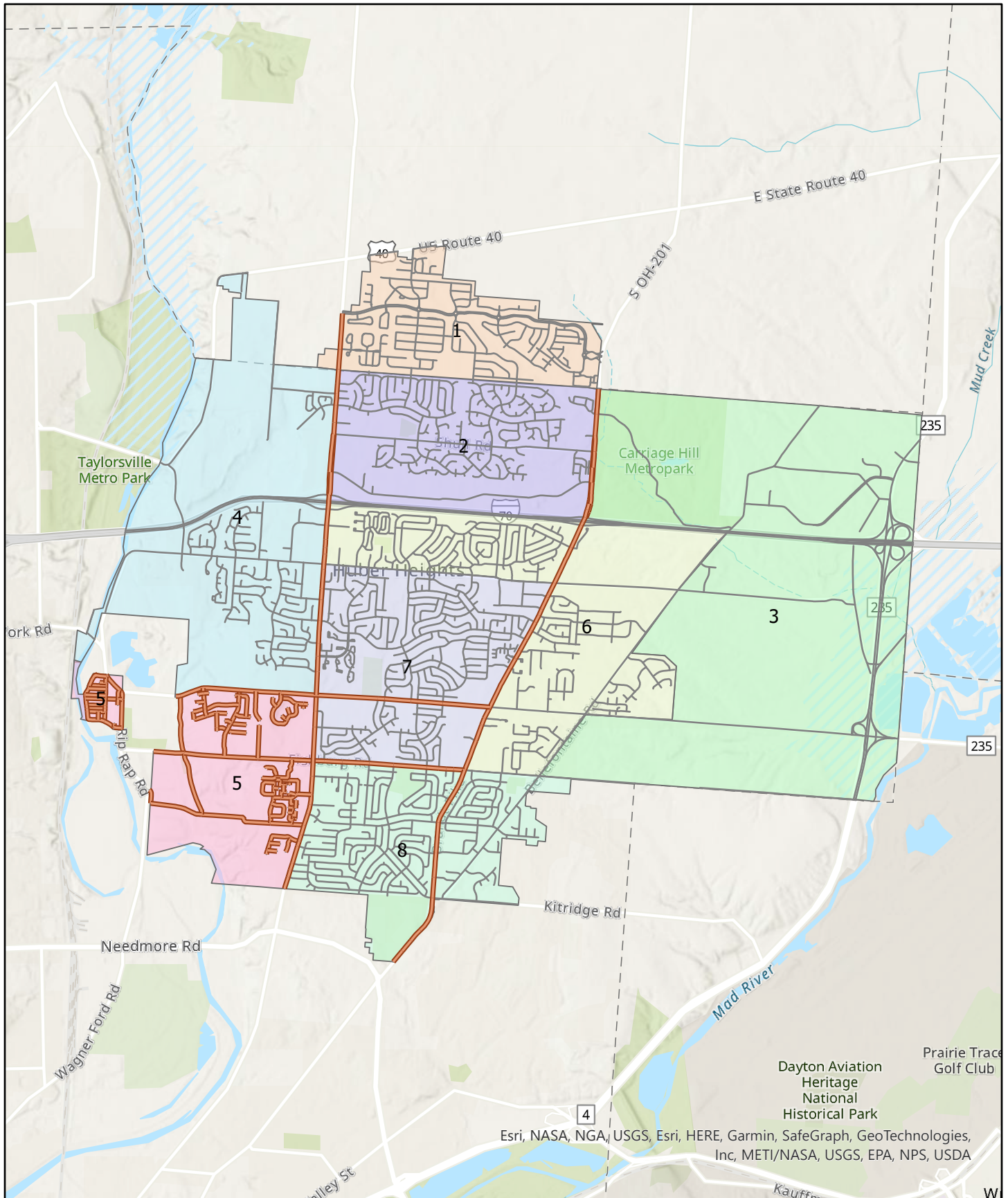


0 0.5 1 2 Miles

1 inch equals 1 miles



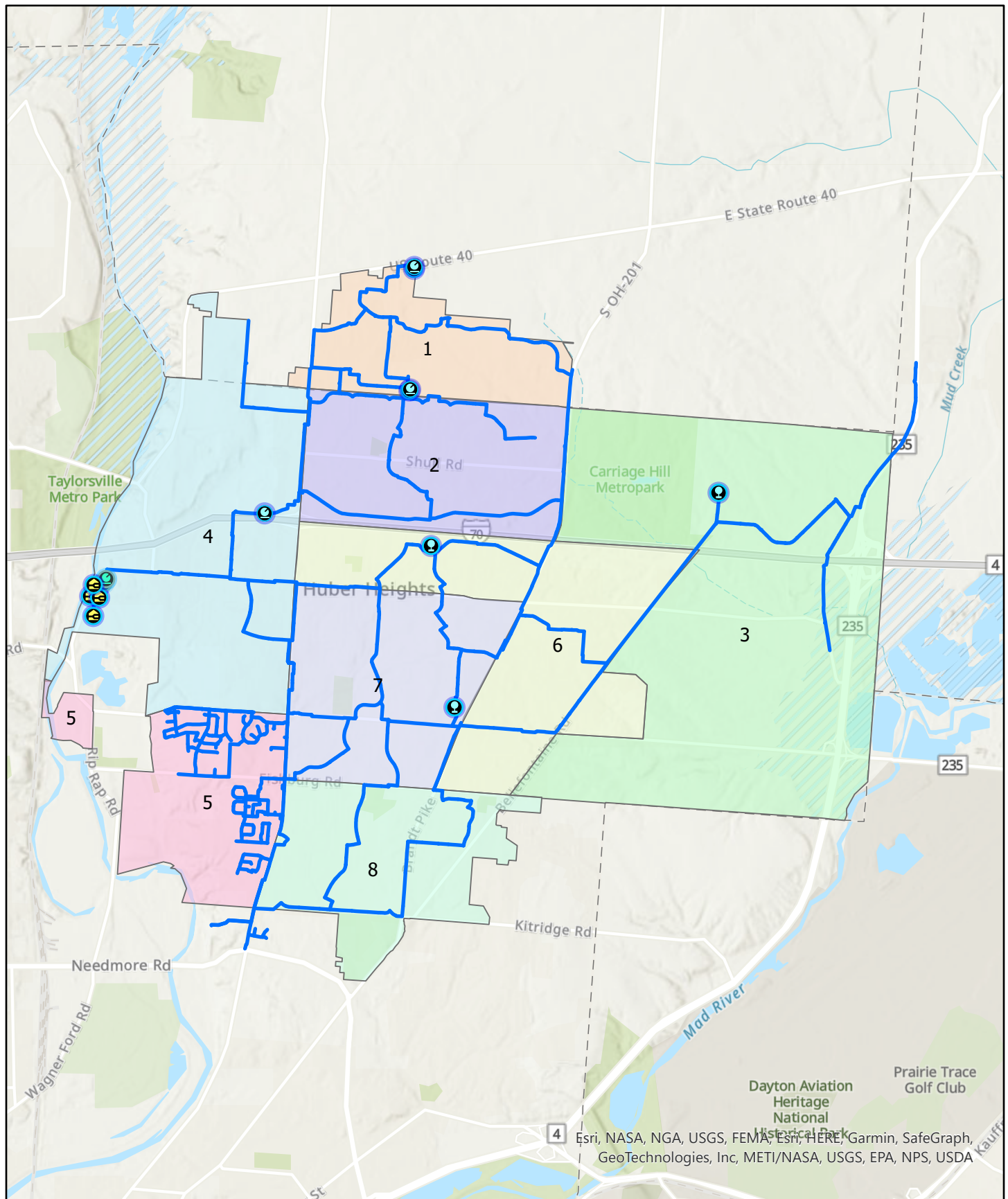
Infrastructure District 5 - Roads



1 inch equals 1 miles



Infrastructure District 5 - Water



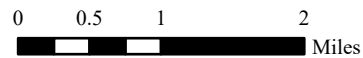
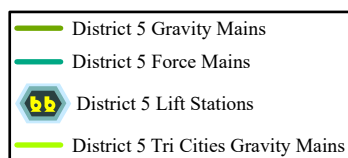
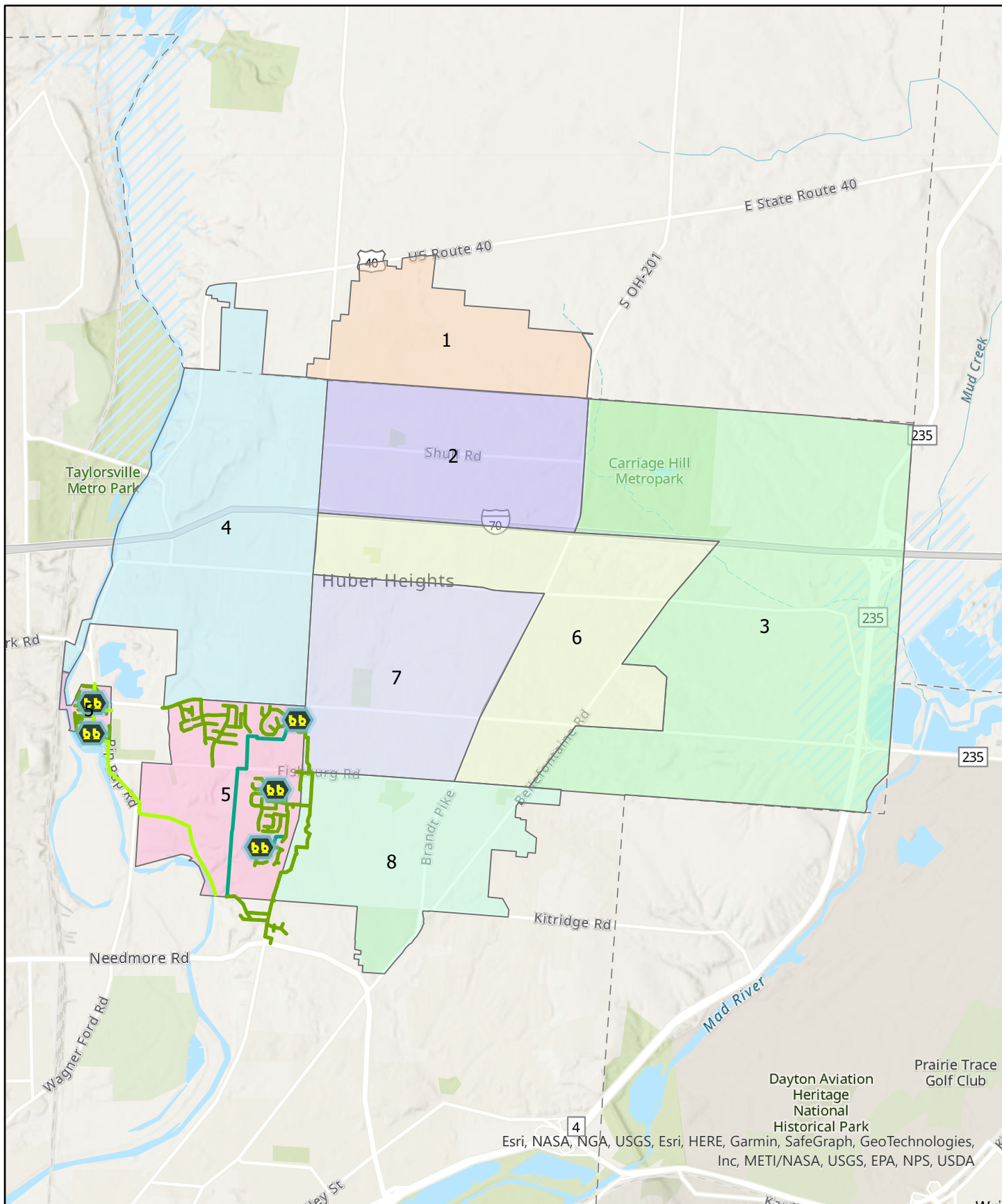
	Enclosed Storage Facility		Pump Station
	Intake		Storage Basin
	Meter Station		Treatment Plant
	Production Well		Water Distribution Mains

0 0.5 1 2
Miles

1 inch equals 1 miles



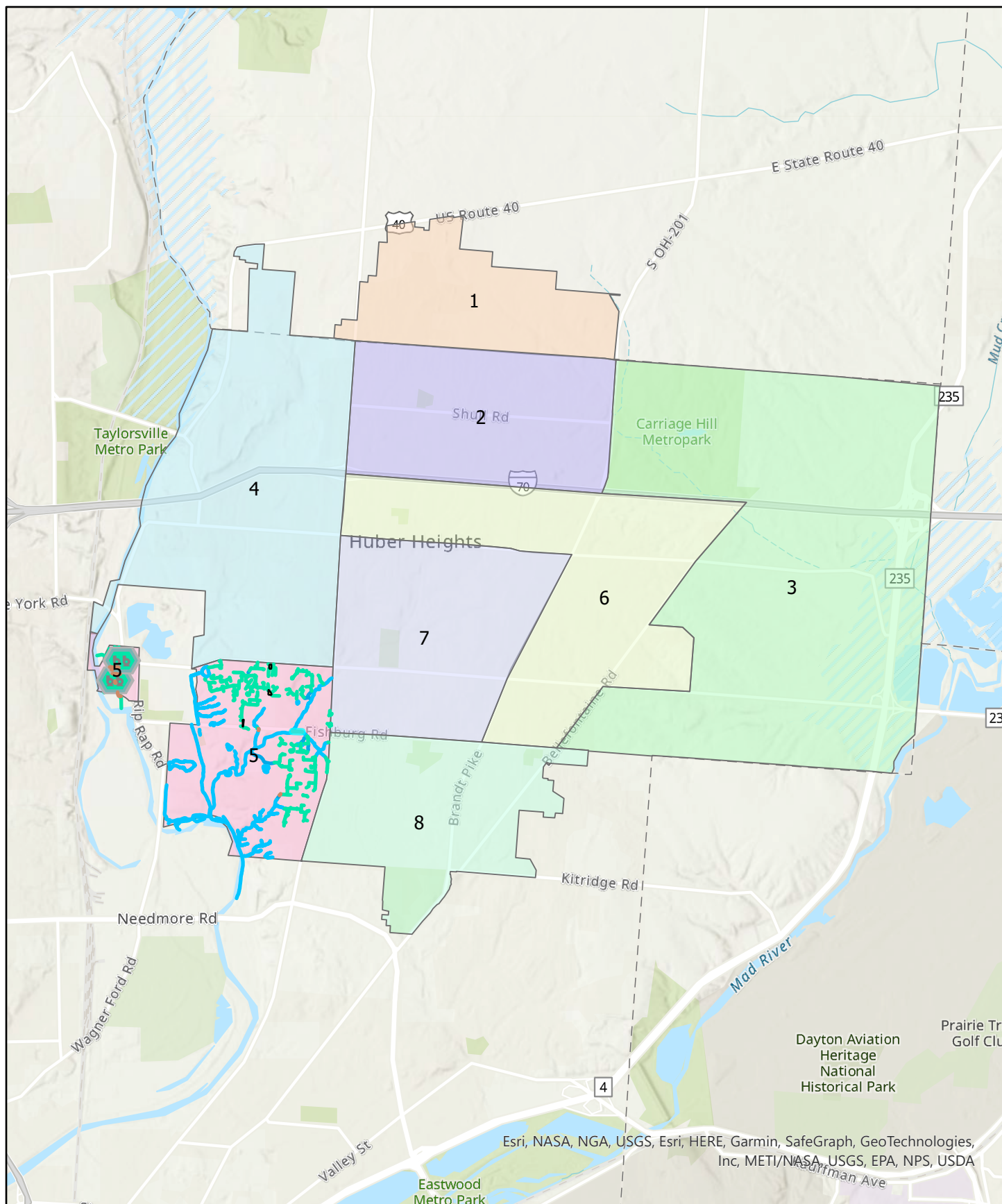
Infrastructure District 5 - Sanitary Sewer



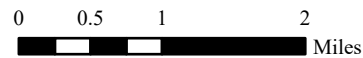
1 inch equals 1 miles



Infrastructure District 5 - Stormwater



— District 5 Stormwater Mains	— District 5 Channels
— District 5 Rivers	 District 5 Basins
— District 5 Culverts	P Pump Station



1 inch equals 1 miles



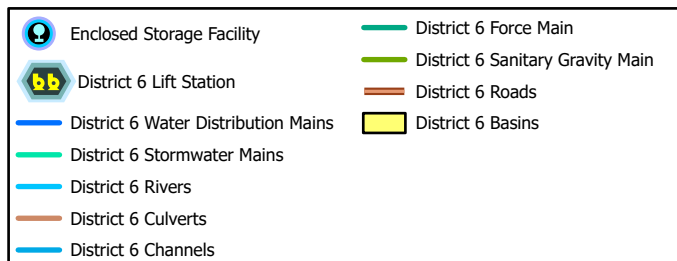
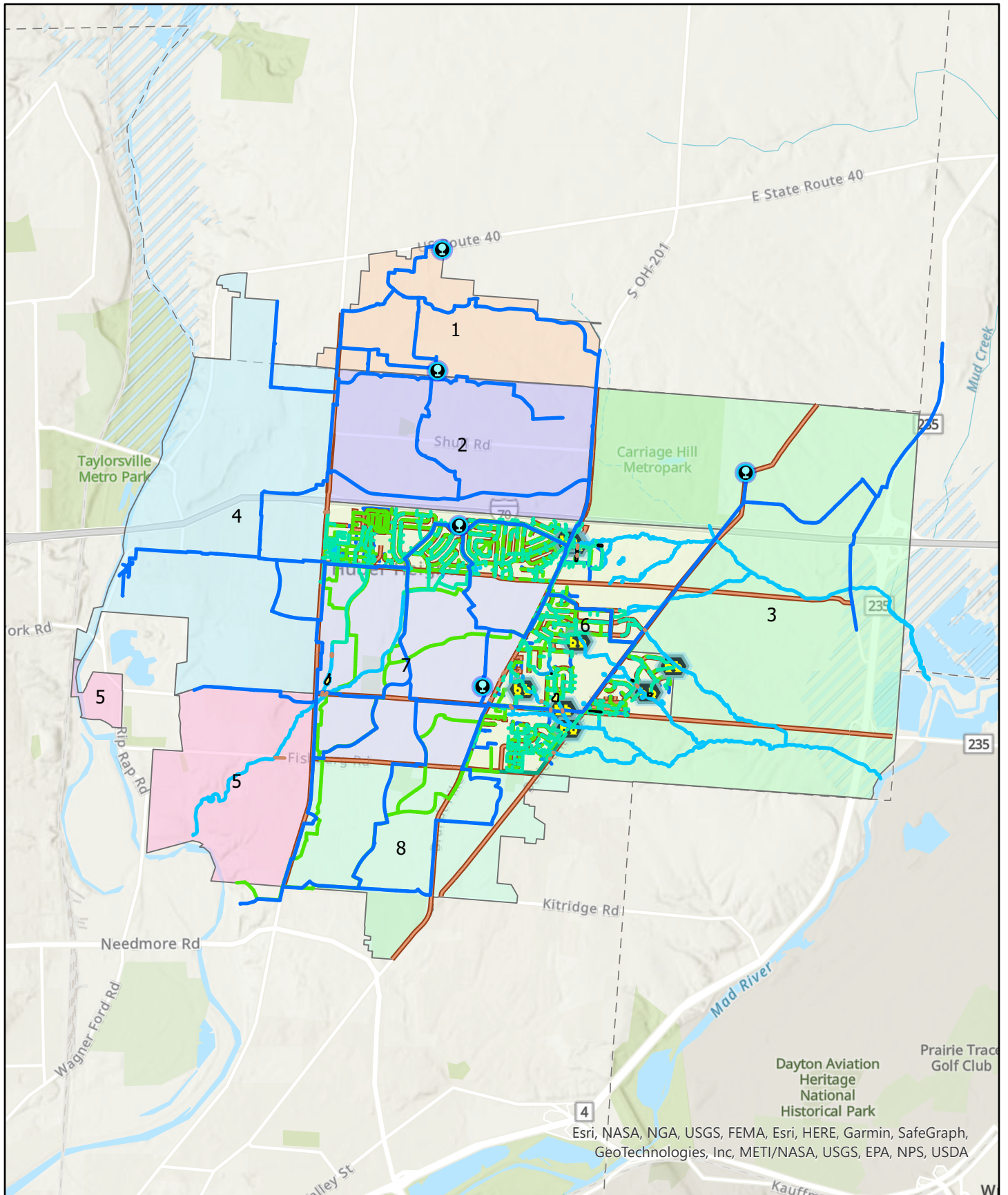
Appendix F

Infrastructure District 6



We think bigger.

Infrastructure District 6 - Overview

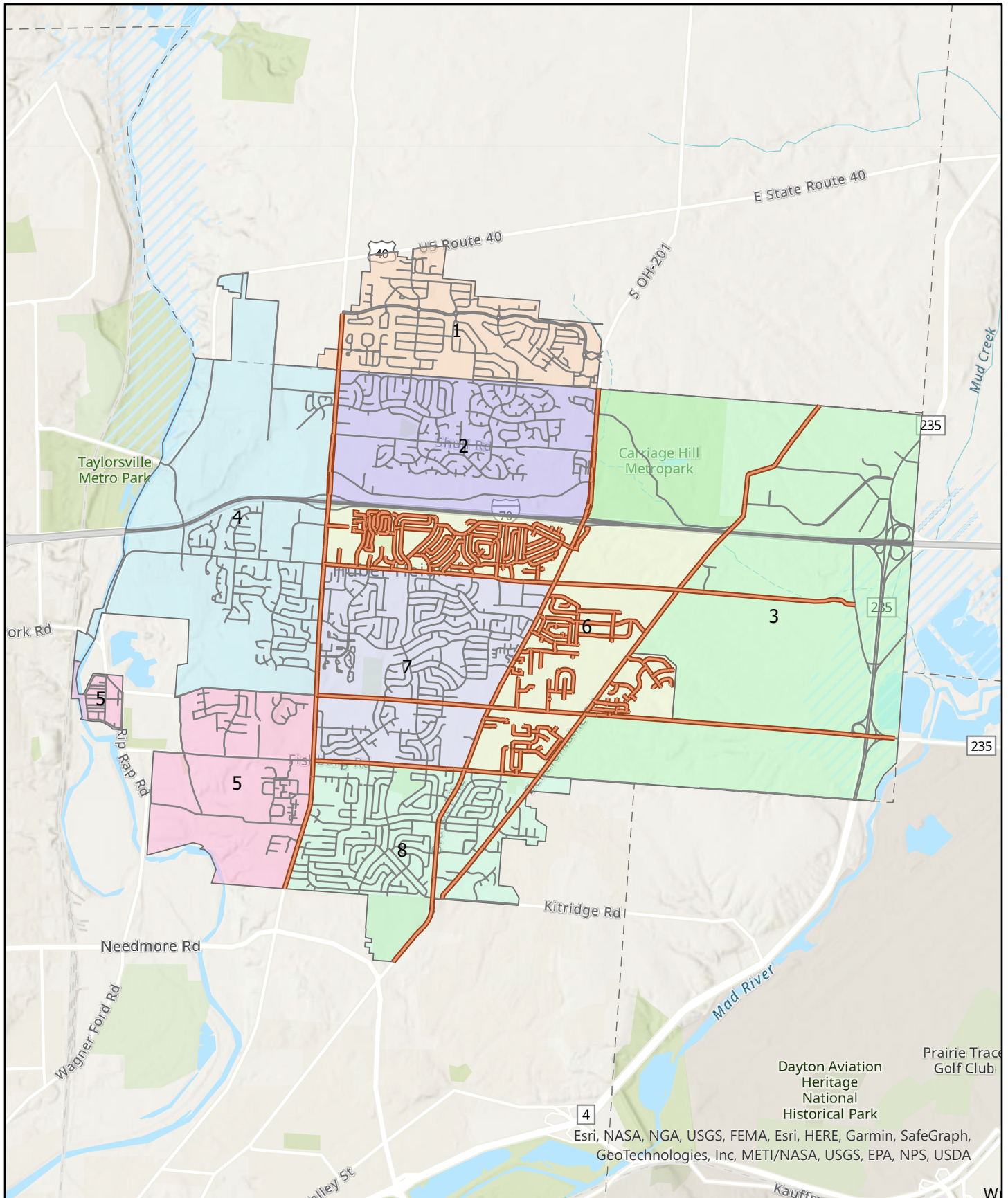


0 0.5 1 2
Miles

1 inch equals 1 miles



Infrastructure District 6 - Roads



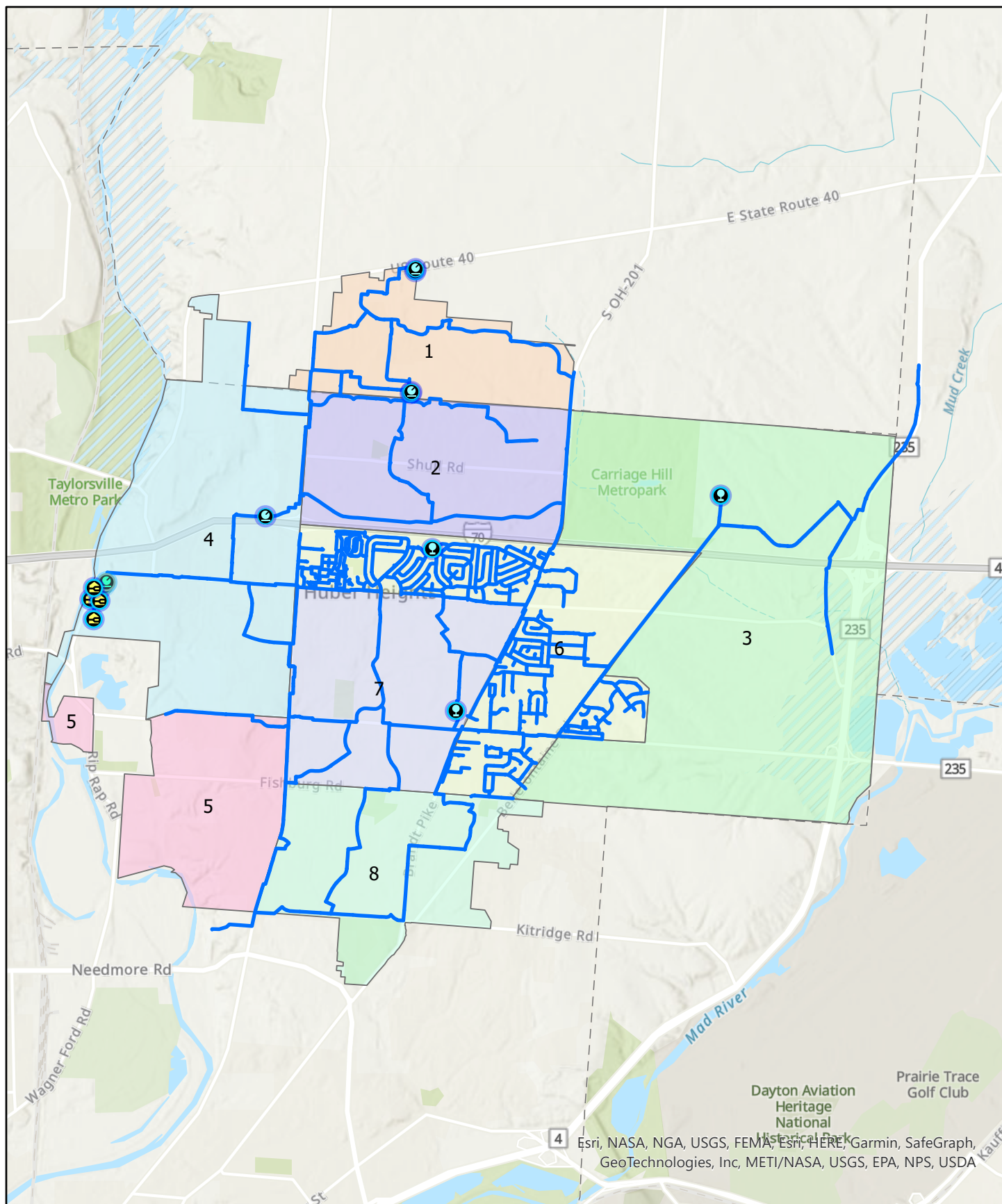
— District 6 Roads
— Huber Heights Streets

0 0.5 1 2
Miles

1 inch equals 1 miles



Infrastructure District 6 - Water



	Enclosed Storage Facility		Pump Station
	Intake		Storage Basin
	Meter Station		Treatment Plant
	Production Well		Water Distribution Mains

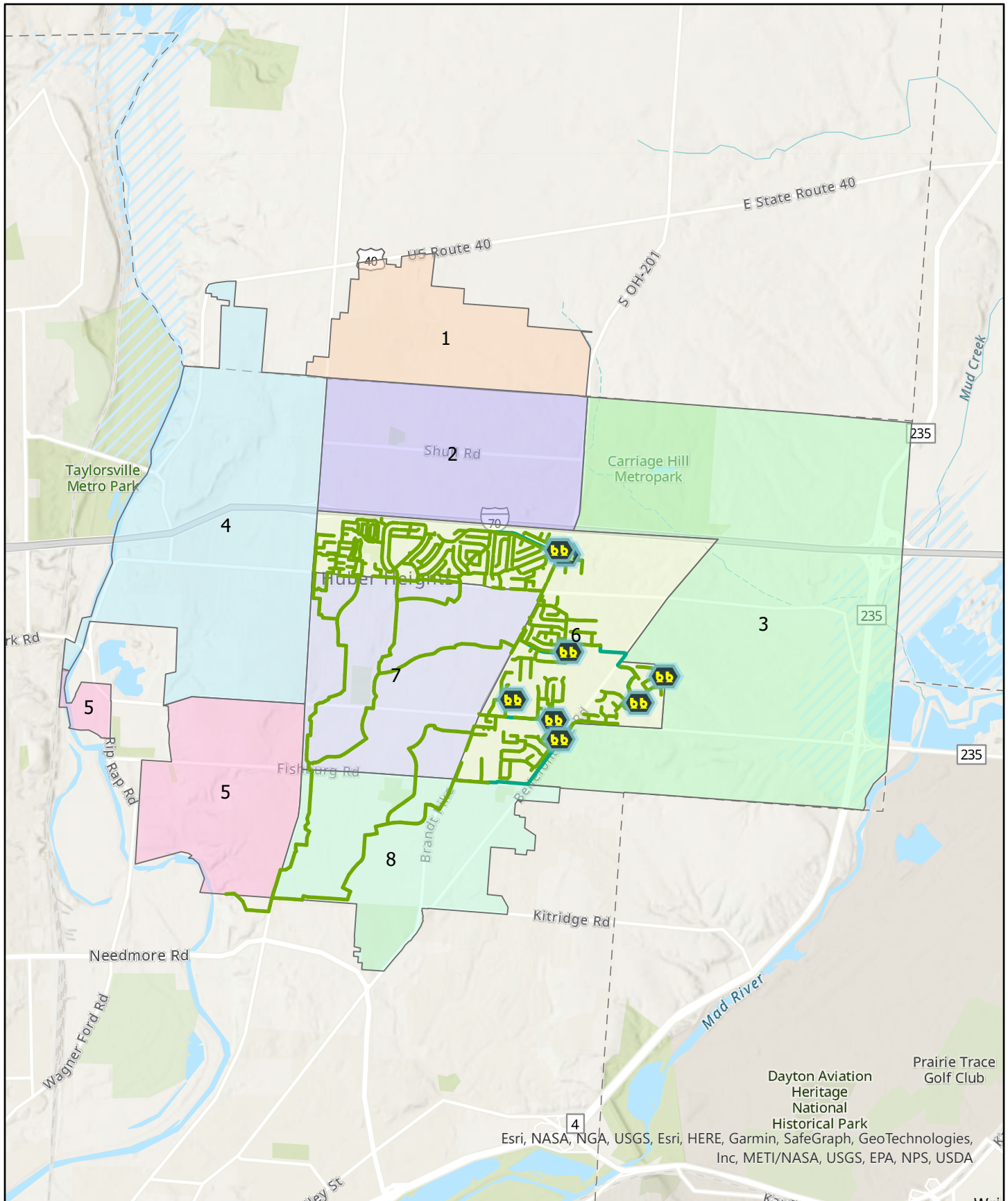
0 0.5 1 2
Miles

1 inch equals 1 miles



Esri, NASA, NGA, USGS, FEMA, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA

Infrastructure District 6 - Sanitary Sewer



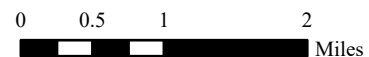
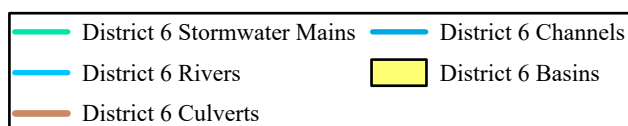
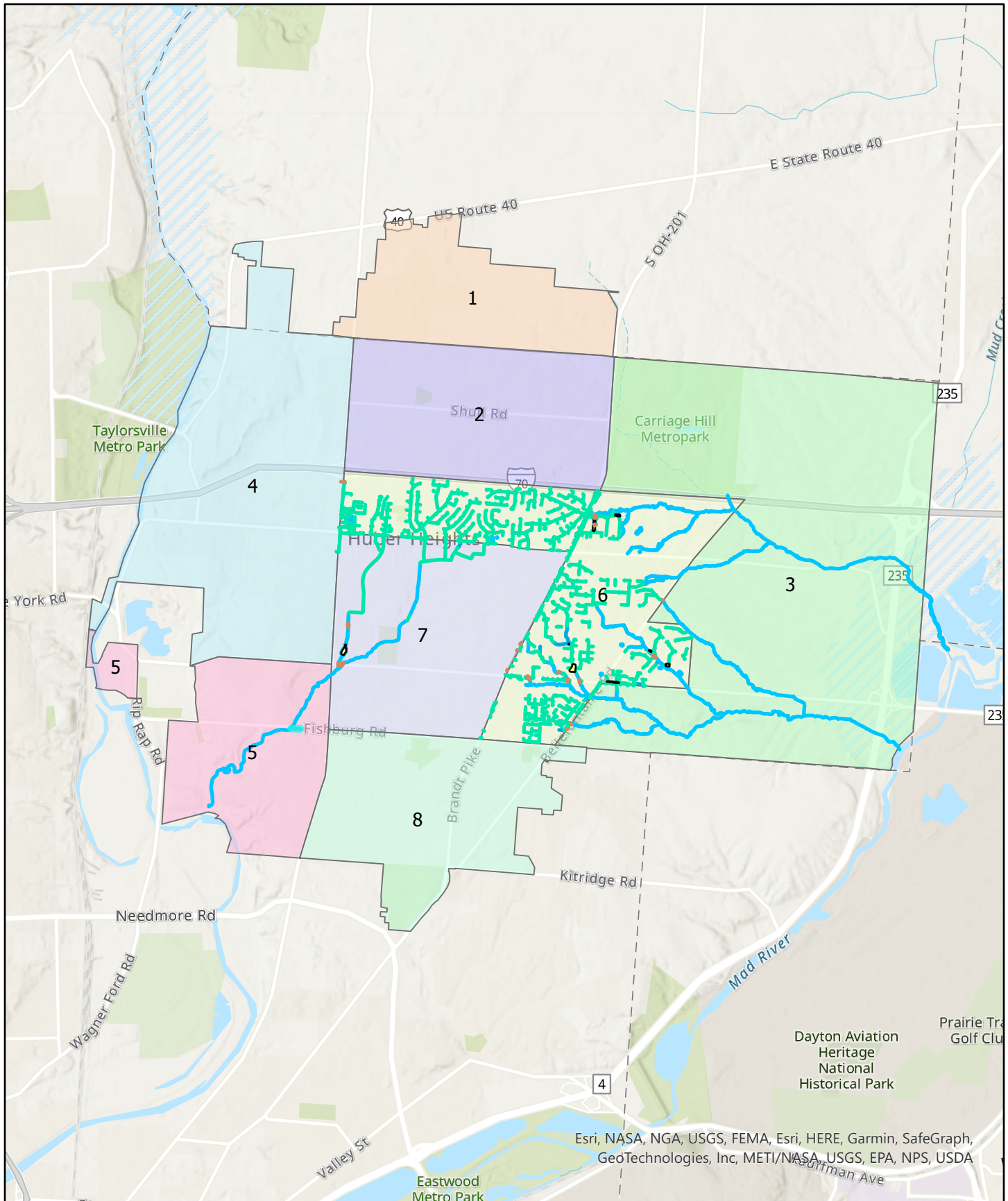
- District 6 Gravity Main
- District 6 Force Main
- bb District 6 Lift Station

0 0.5 1 2
Miles

1 inch equals 1 miles



Infrastructure District 6 - Stormwater



1 inch equals 1 miles



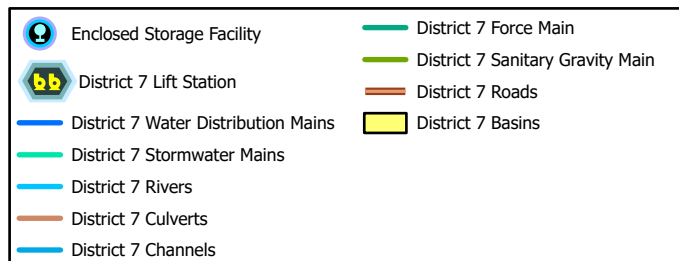
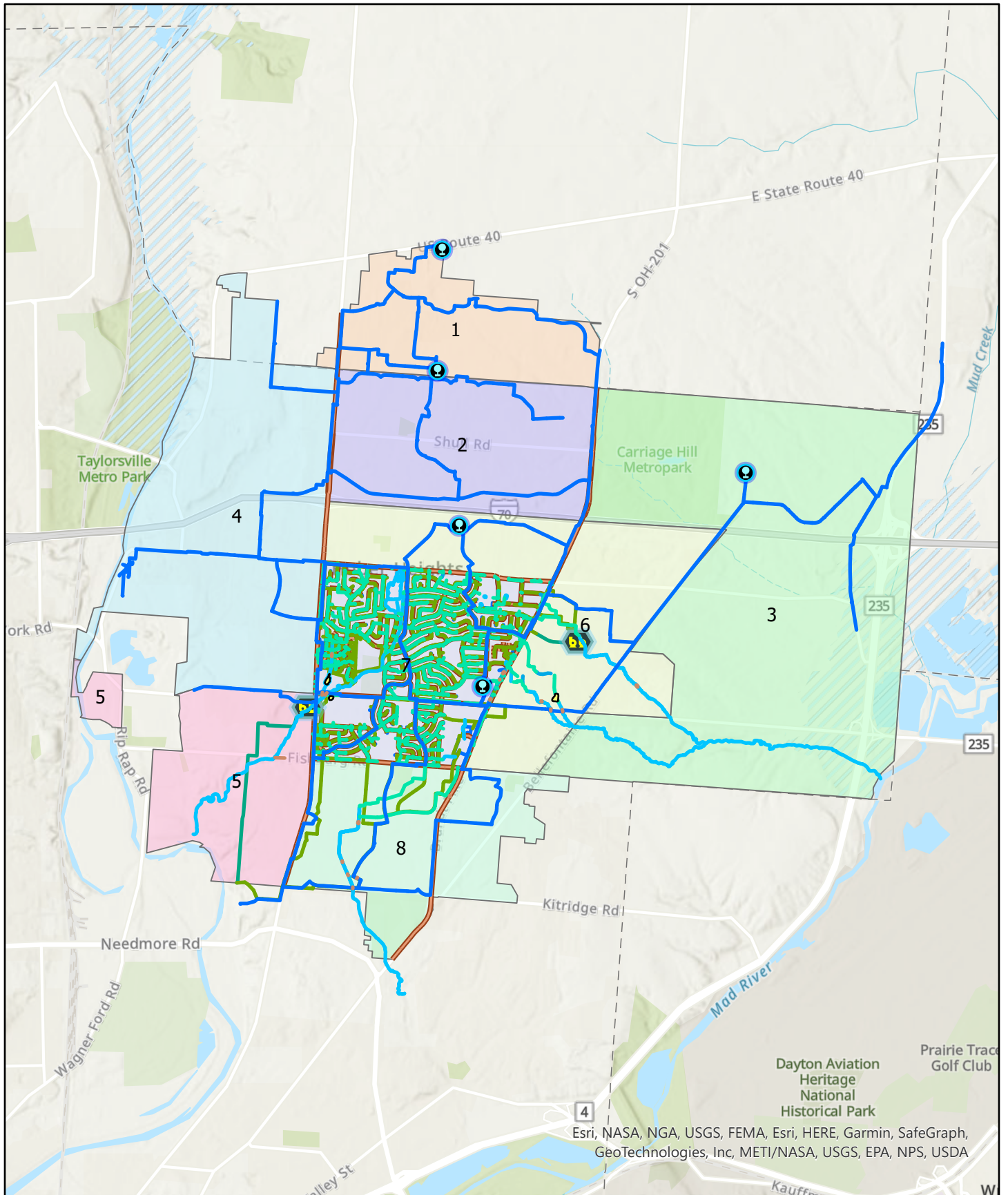
Appendix G

Infrastructure District 7



We think bigger.

Infrastructure District 7 - Overview

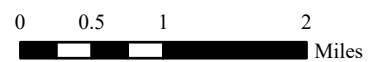
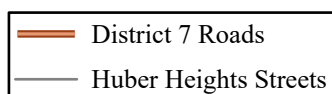
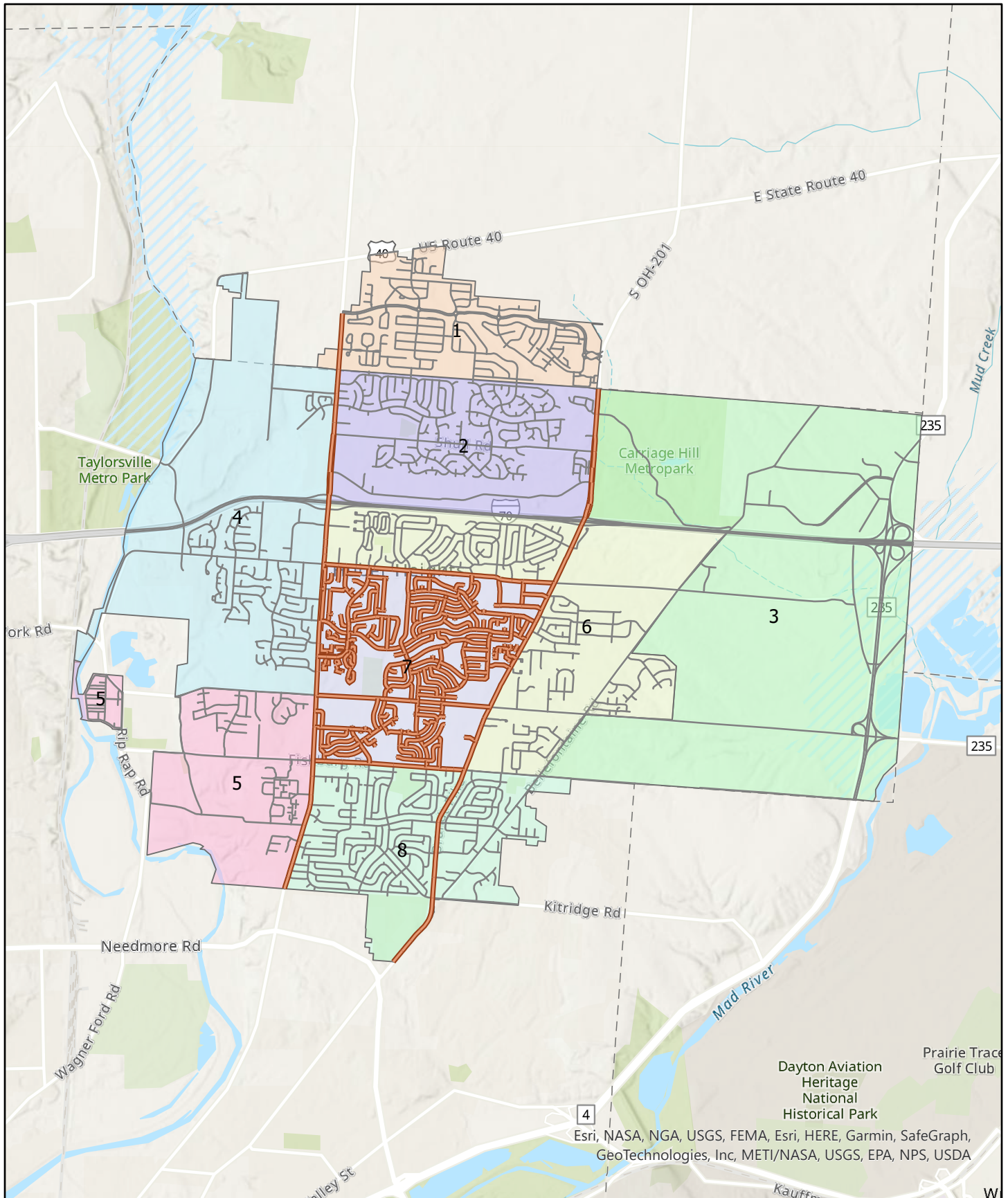


0 0.5 1 2 Miles

1 inch equals 1 miles



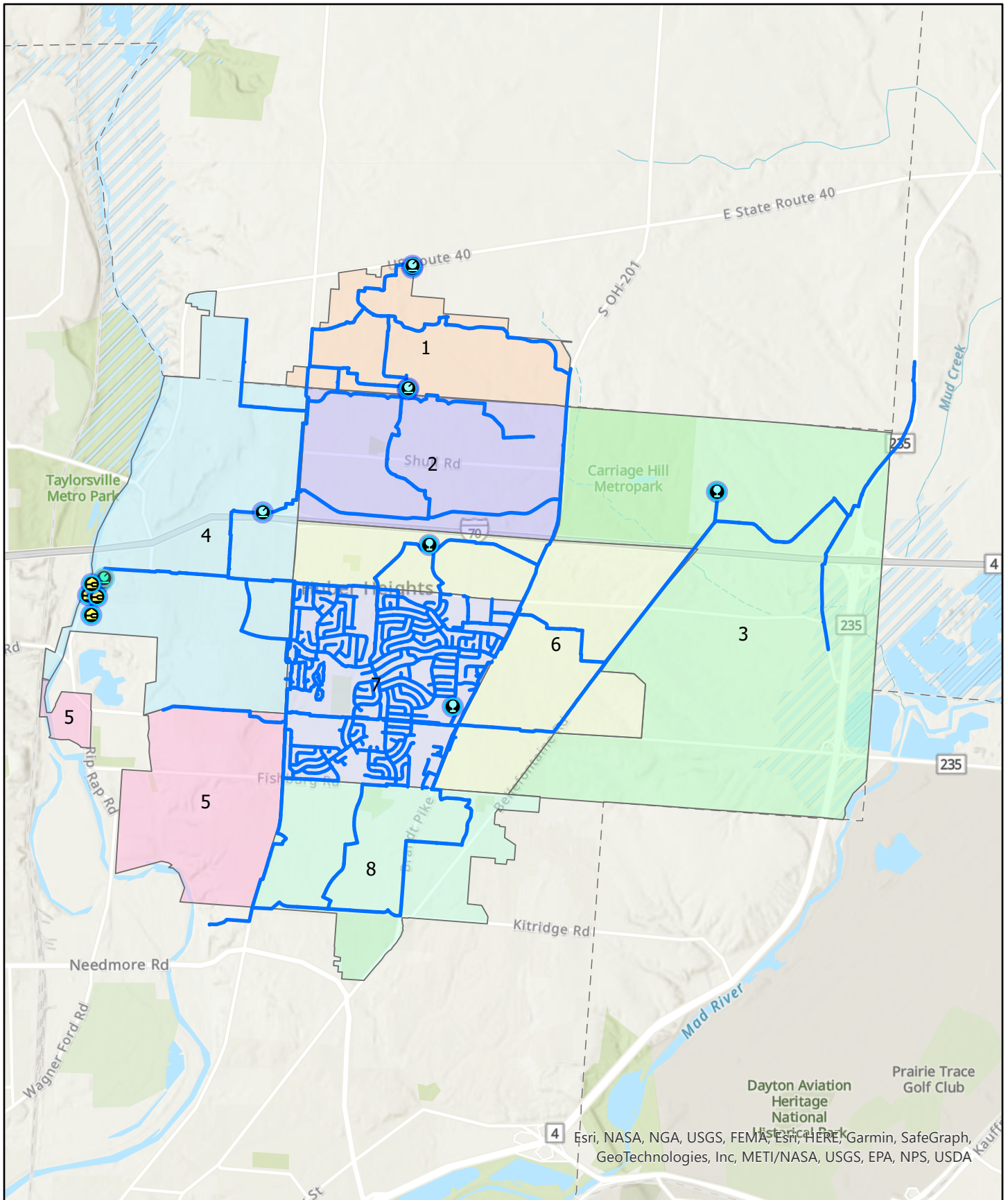
Infrastructure District 7 - Roads



1 inch equals 1 miles



Infrastructure District 7 - Water



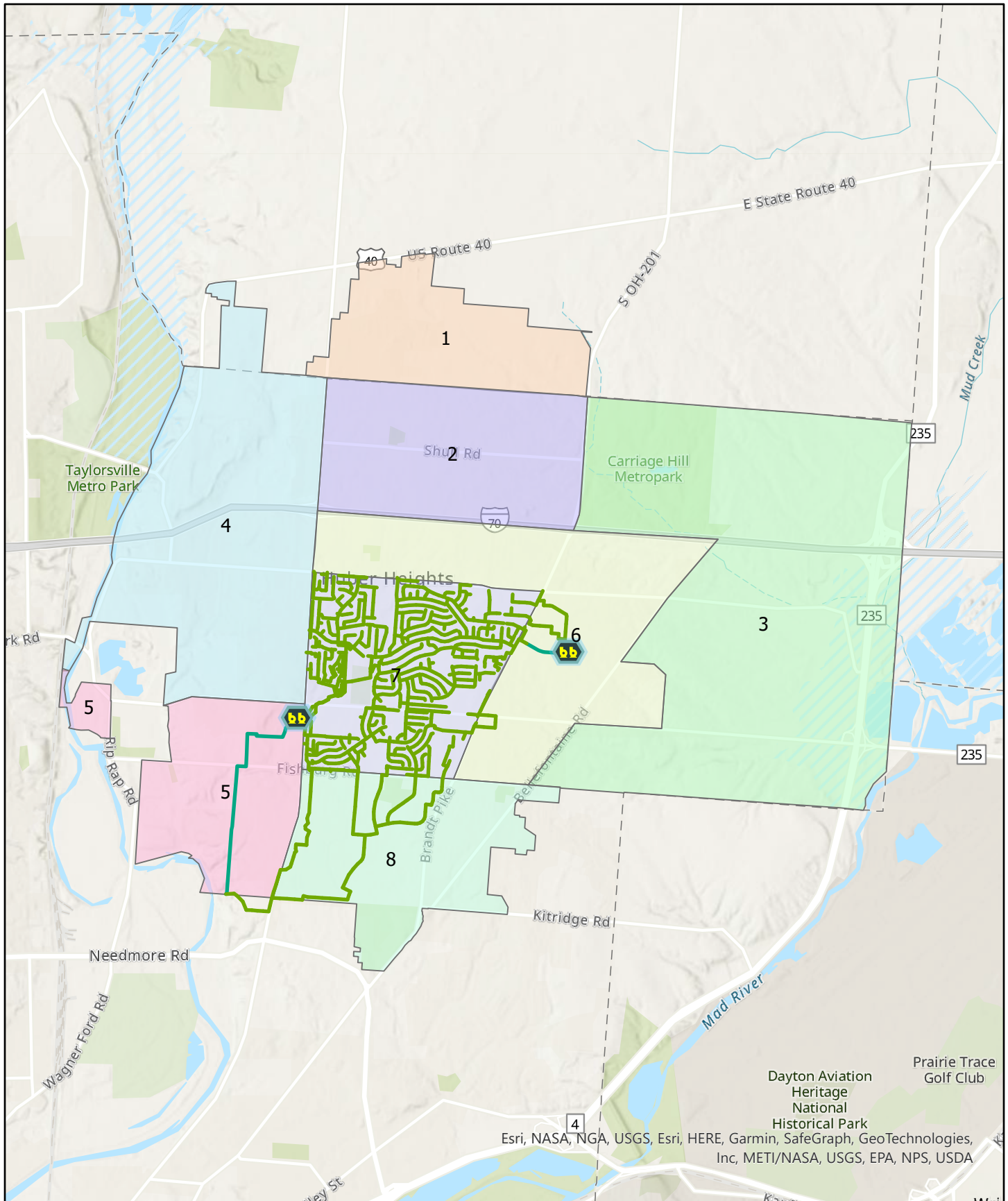
	Enclosed Storage Facility		Pump Station
	Intake		Storage Basin
	Meter Station		Treatment Plant
	Production Well		Water Distribution Mains

0 0.5 1 2
Miles

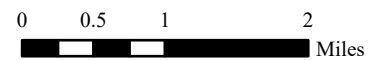
1 inch equals 1 miles



Infrastructure District 7 - Sanitary Sewer



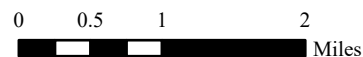
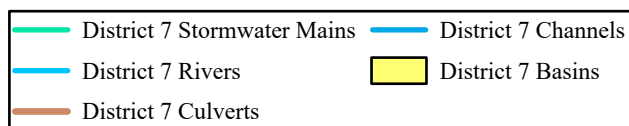
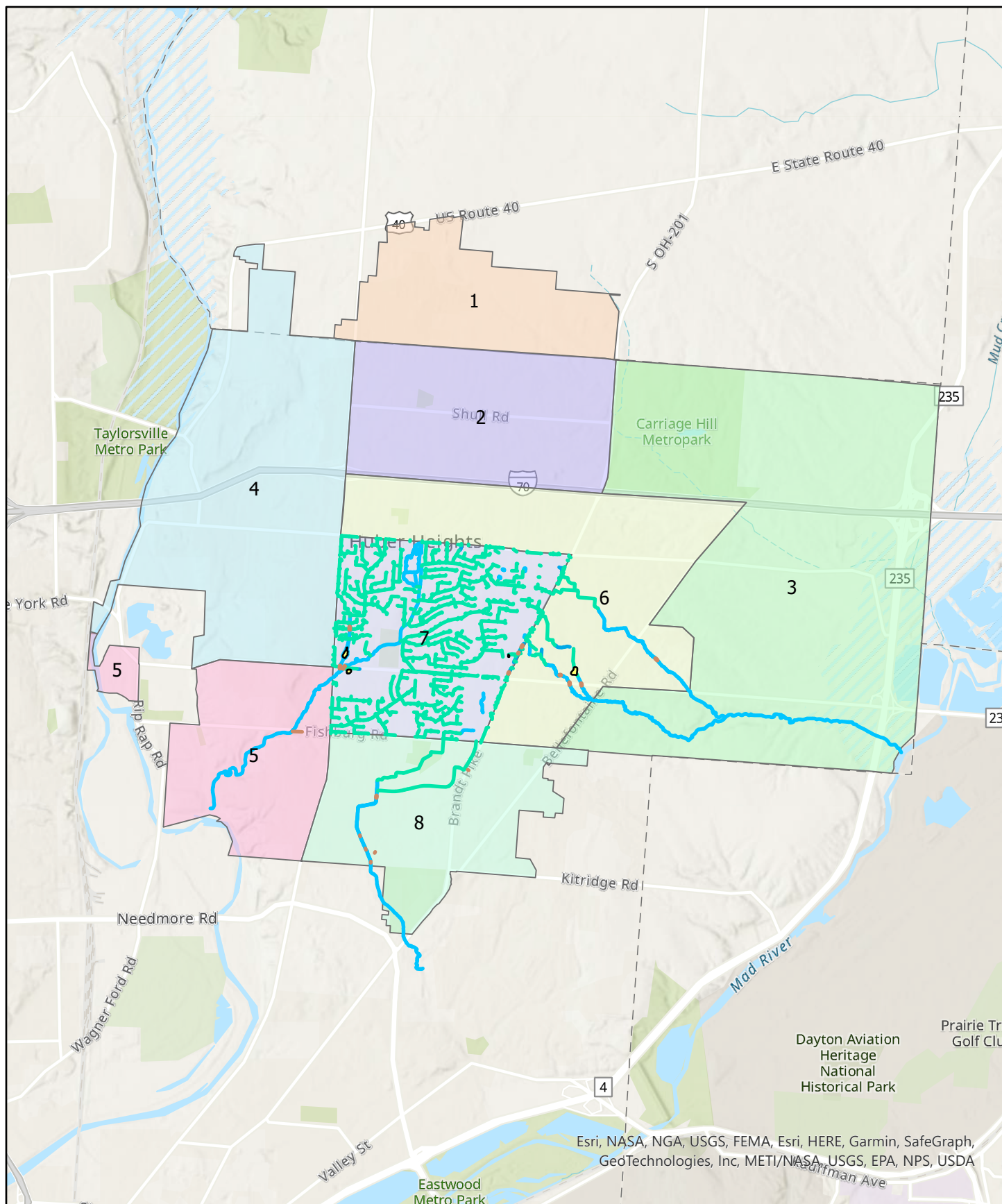
- District 7 Gravity Main
- District 7 Force Main
- bb District 7 Lift Station



1 inch equals 1 miles



Infrastructure District 7 - Stormwater



1 inch equals 1 miles



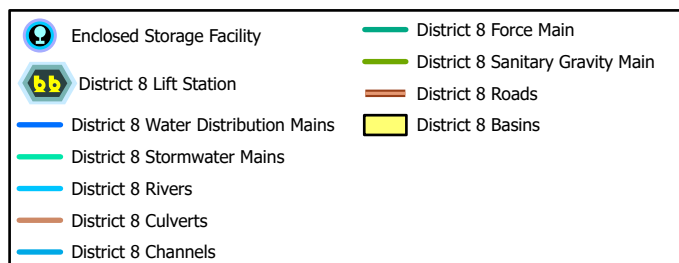
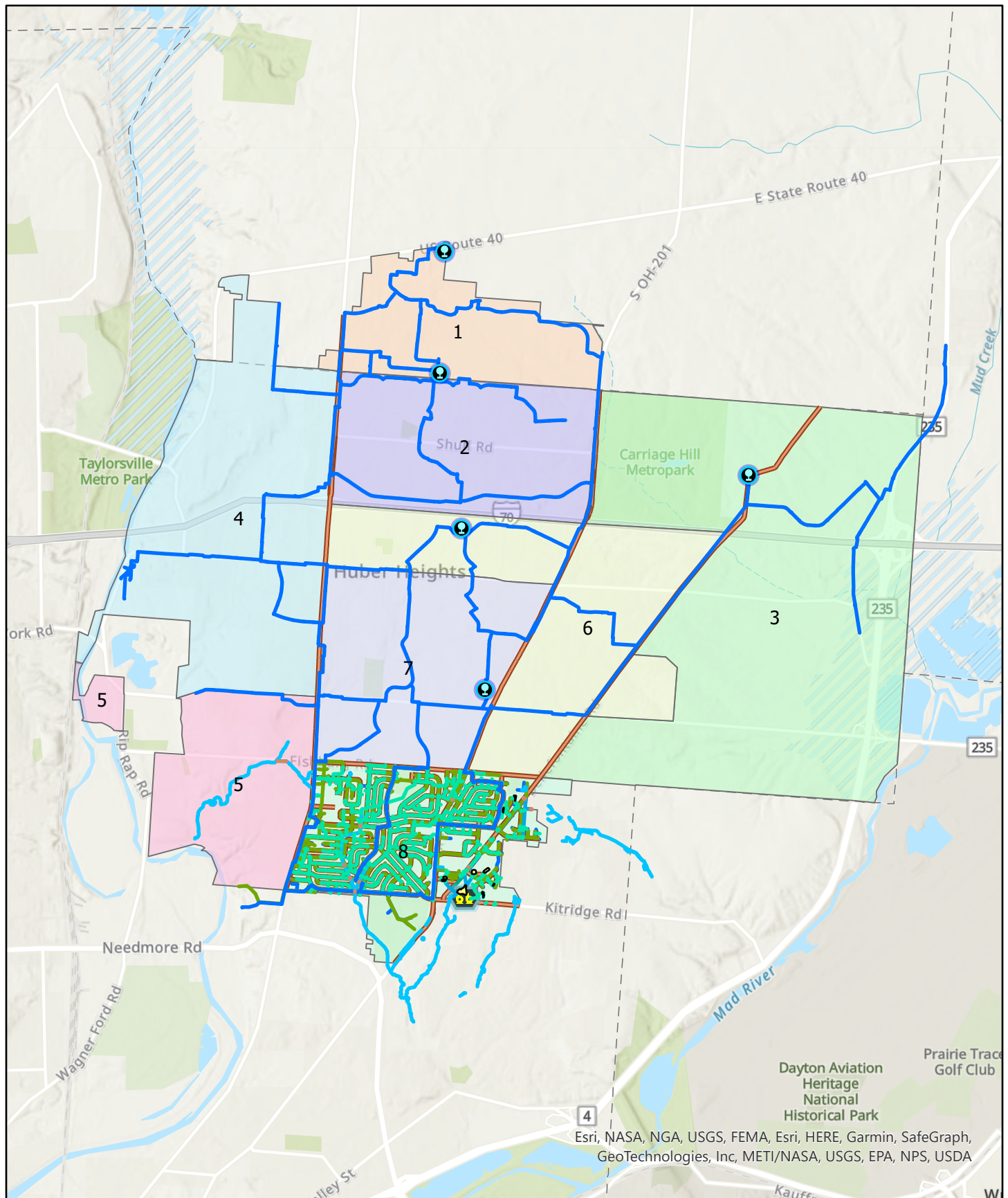
Appendix H

Infrastructure District 8



We think bigger.

Infrastructure District 8 - Overview

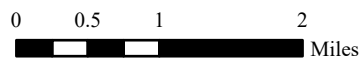
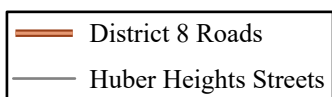
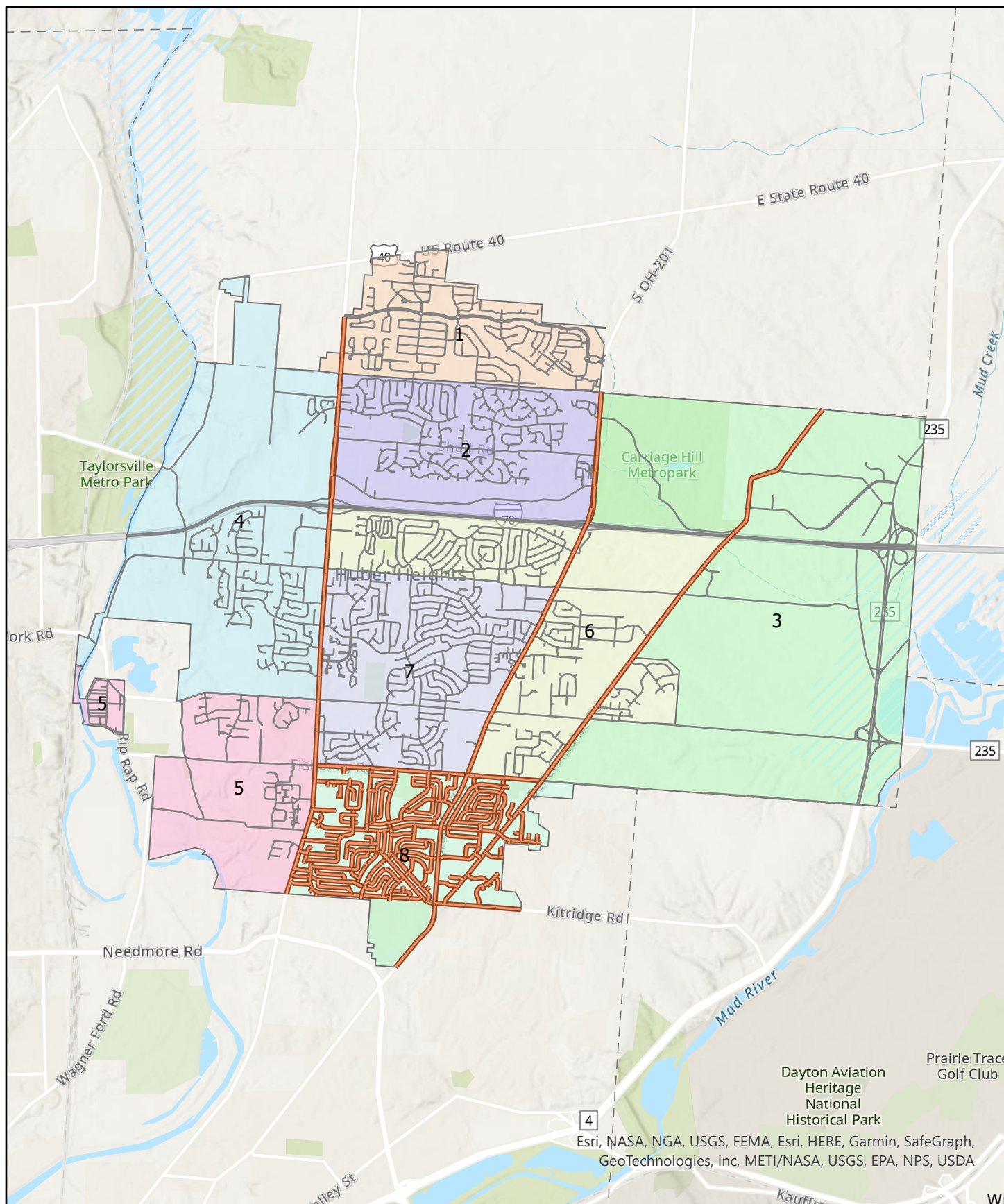


0 0.5 1 2 Miles

1 inch equals 1 miles



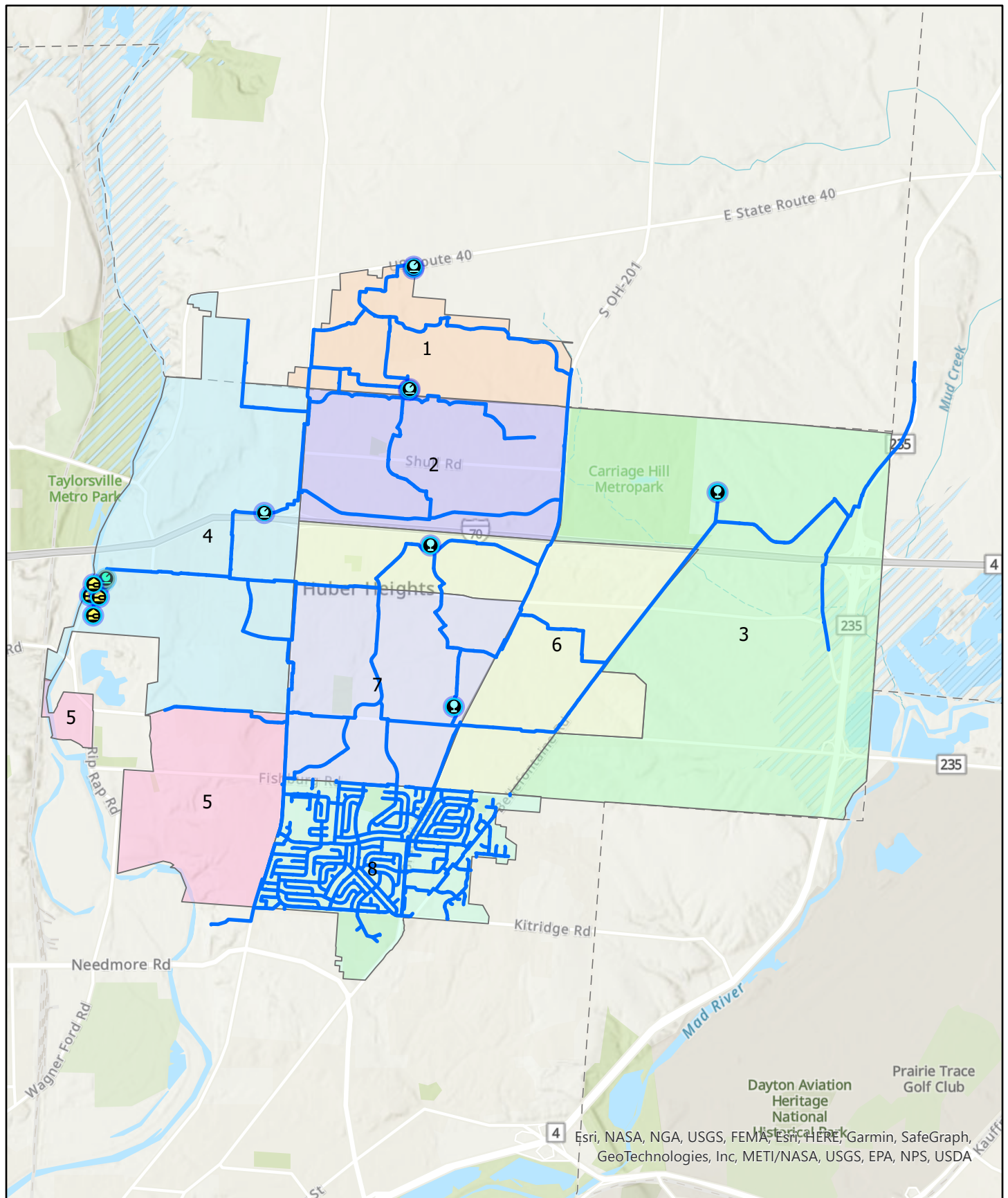
Infrastructure District 8 - Roads



1 inch equals 1 miles



Infrastructure District 8 - Water



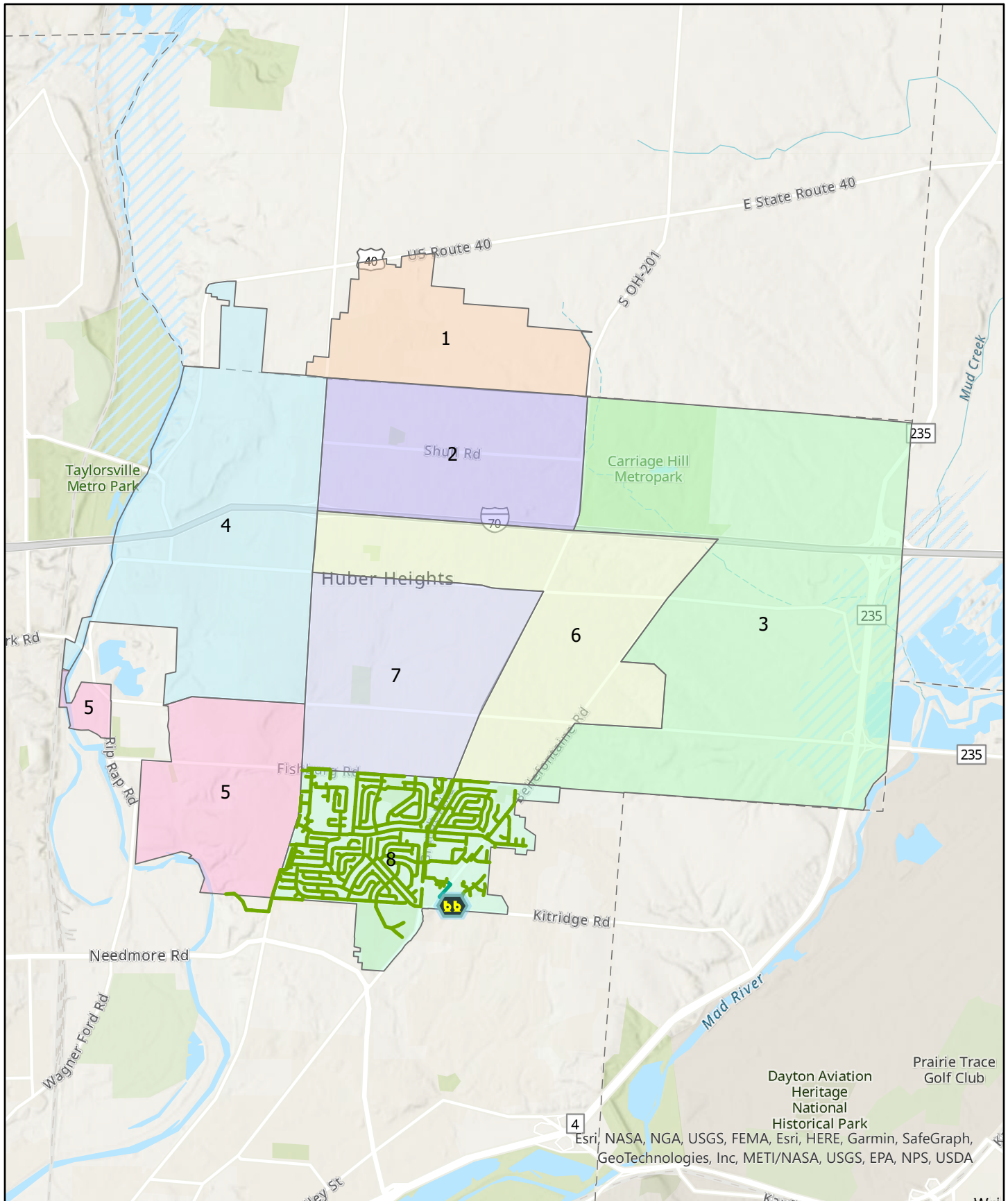
	Enclosed Storage Facility		Pump Station
	Intake		Storage Basin
	Meter Station		Treatment Plant
	Production Well		Water Distribution Mains

0 0.5 1 2 Miles

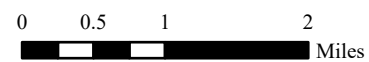
1 inch equals 1 miles



Infrastructure District 8 - Sanitary Sewer



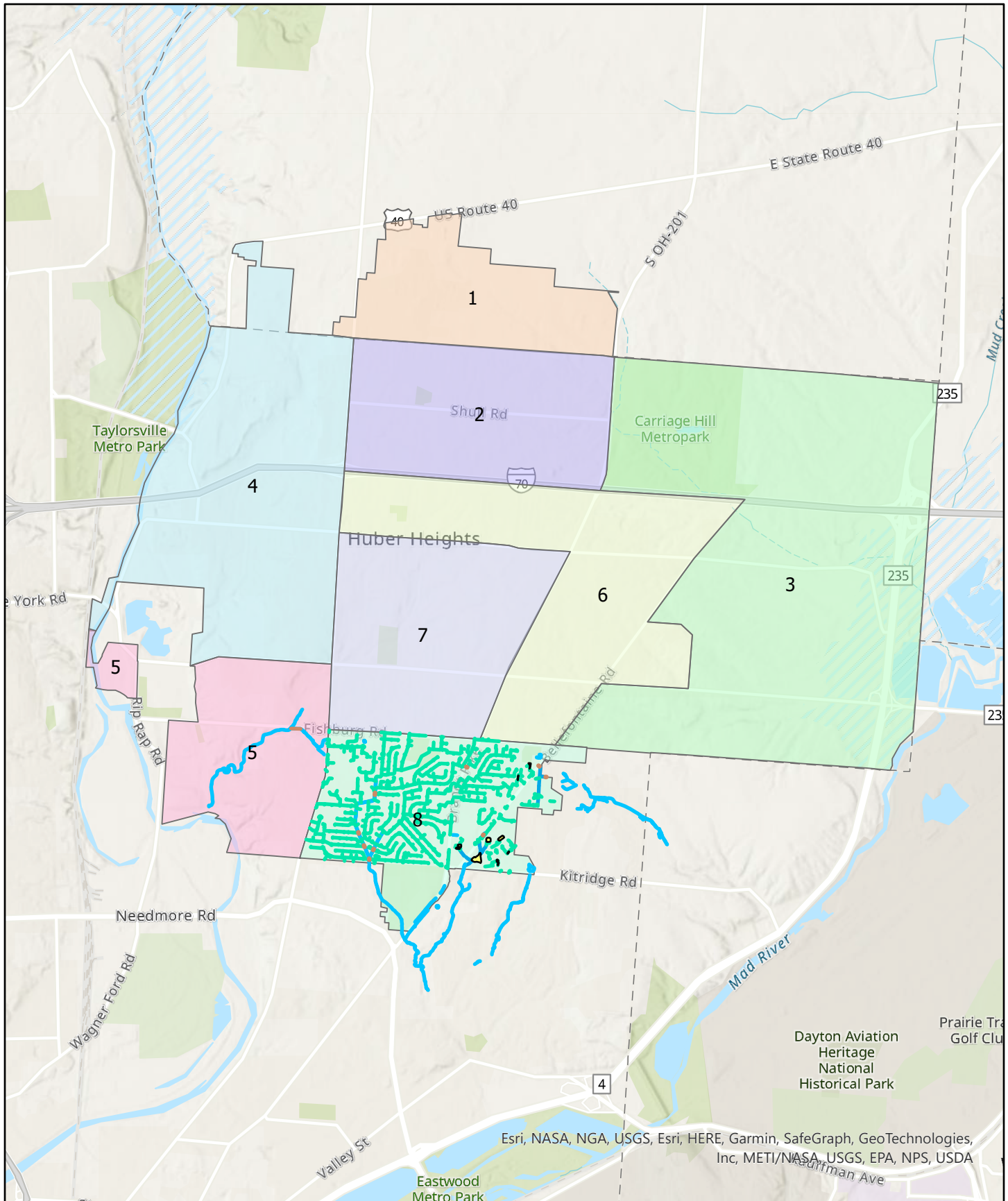
- District 8 Gravity Main
- District 8 Force Main
- bb District 8 Lift Station



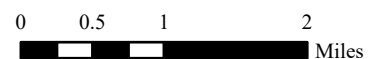
1 inch equals 1 miles



Infrastructure District 8 - Stormwater



— District 8 Stormwater Mains	— District 8 Channels
— District 8 Rivers	 District 8 Basins
— District 8 Culverts	



1 inch equals 1 miles



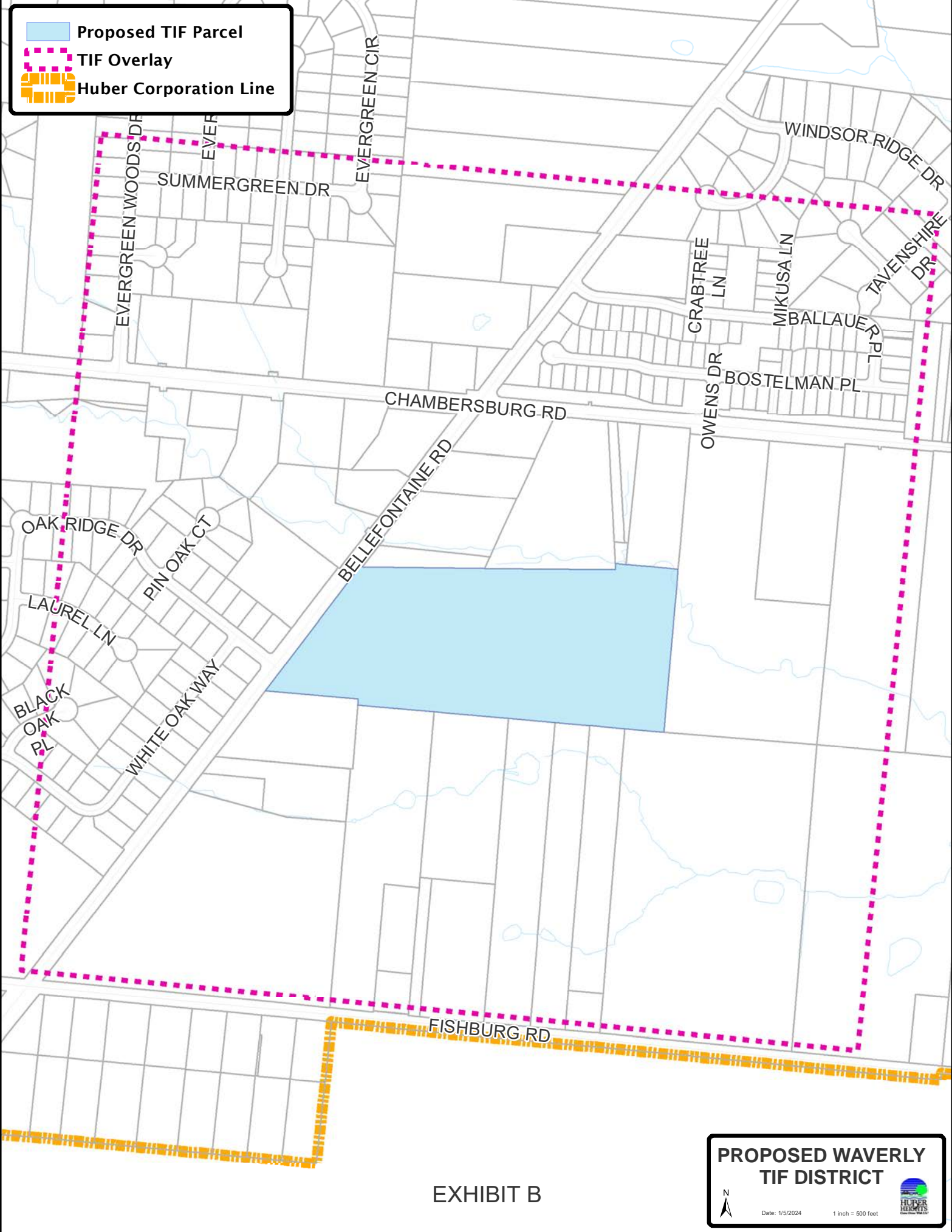


EXHIBIT B

**PROPOSED WAVERLY
TIF DISTRICT**



Date: 1/5/2024

1 inch = 500 feet



CERTIFICATE OF CITY ENGINEER
PURSUANT TO OHIO REVISED CODE SECTION 5709.40(A)(5)(f)

WHEREAS, pursuant to Ohio Revised Code Section 5709.40(C), City Council of the City of Huber Heights, Ohio (the “City”), by its proposed Ordinance No. 2024-O-2627 (the “*Proposed Ordinance*”), intends to create the “Waverly Incentive District” (the “*Proposed District*”) and to declare improvements to parcels of real property located within the Proposed District to be a public purpose and exempt from taxation; and

WHEREAS, the real property specifically identified and depicted on Exhibit A to the Proposed Ordinance (collectively, the “*Parcels*”) is located in the City of Huber Heights, Montgomery County, Ohio; and

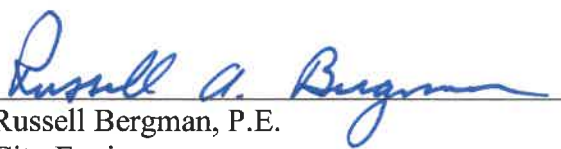
WHEREAS, the boundary of the Proposed District would be coextensive with the boundary of the *Parcels* within the Proposed District as further depicted and described on Exhibit A to the Proposed Ordinance; and

WHEREAS, City Council approved Ordinance No. 2024-O-2627 approving the “Waverly Development Project –Residential Incentive District” (the “*Development Plan*”) on February 12, 2024 which Development Plan details the development needs of the *Parcels* and the Proposed District;

NOW, THEREFORE, I certify that I am the duly appointed, qualified and acting City Engineer of the City of Huber Heights, Ohio, and that:

1. The Proposed District contains an area not more than three hundred acres in size enclosed by a continuous boundary.
2. The public infrastructure serving the Proposed District is inadequate to meet the development needs of that Proposed District as evidenced by the Development Plan as adopted by City Council.

Dated: February 20, 2024



Russell Bergman, P.E.
City Engineer
City of Huber Heights, Ohio

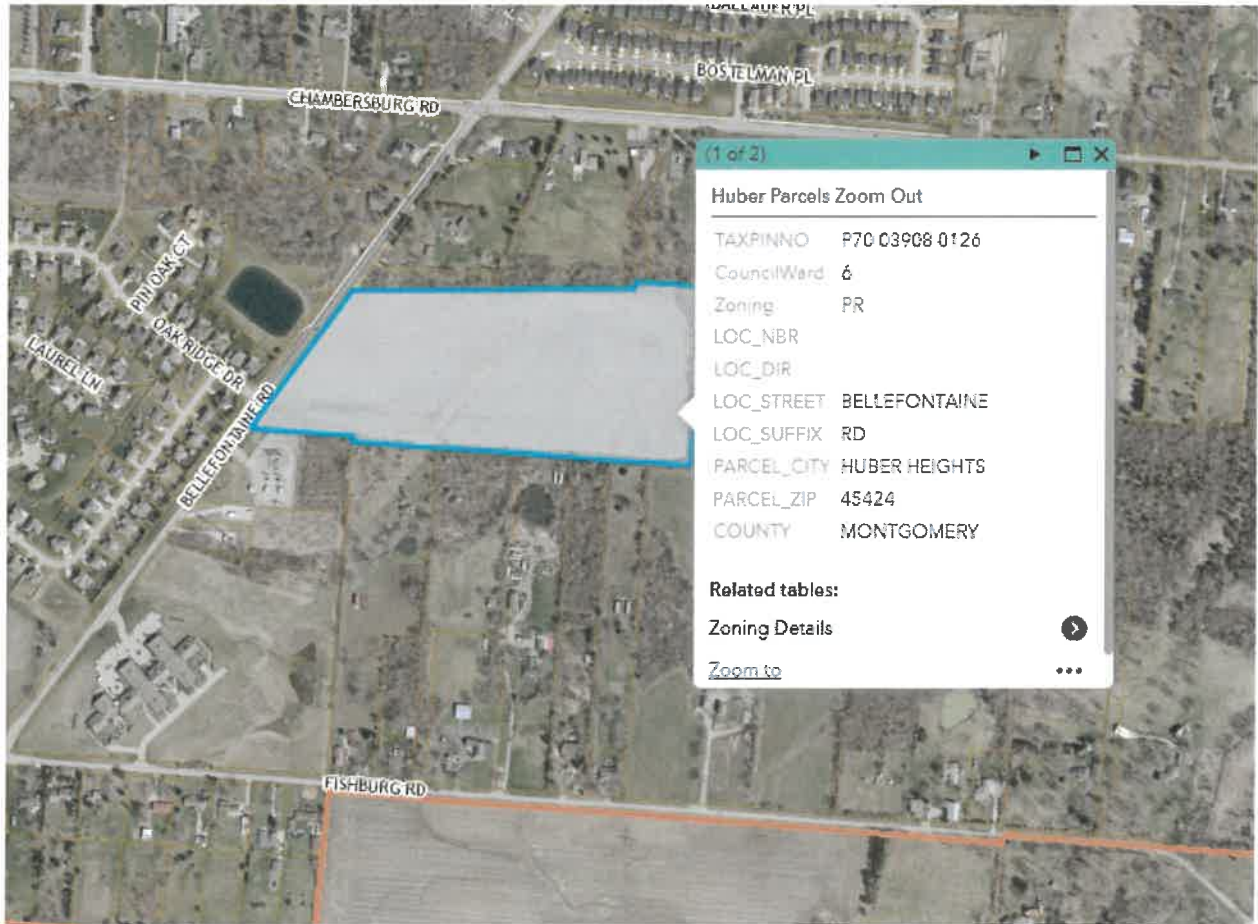
EXHIBIT A

IDENTIFICATION AND MAP OF THE INCENTIVE DISTRICT

The enclosed area on the following map specifically identifies and depicts the Parcels and the boundaries of the Incentive District, and constitutes part of this Exhibit A. The following Parcel numbers are as of February 20, 2024 and are included for ease of reference only.

Parcel Numbers:

TAXPINNO	LOC_NBR	LOC_STREET	LOC_SUFFIX	LOC_AREA
P70039080126		BELLEFONTAINE	RD	HUBER HEIGHTS




Proposed TIF Parcel
TIF Overlay
Huber Corporation Line



**PROPOSED WAVERLY
TIF DISTRICT**

N

Date: 1/5/2024 1 inch = 500 feet



AI-10023

**New Business E.
City Manager**

City Council Meeting

Meeting Date: 04/22/2024

Miami County Prosecution Services

Submitted By: Richard Dzik

Department: City Manager

Council Committee Review?: Council **Date(s) of Committee Review:** 04/16/2024
Work
Session

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Of Huber Heights To Enter Into An Agreement With Shipman, Dixon, & Livingston Co., L.P.A. For Prosecutorial Services In Miami County For The City Of Huber Heights, Ohio.
(first reading)

Purpose and Background

In consultation with Coolidge Law, Co., L.P.A. and Shipman, Dixon & Livingston, it is determined that Shipman, Dixon & Livingston, which serves as the Law Director for the City of Troy, is best positioned to provide prosecutorial services for the City of Huber Heights for cases in Miami County. Currently, there are approximately 35 cases per year in Miami County.

Fiscal Impact

Source of Funds: General Fund

Cost: \$7,500

Recurring Cost? (Yes/No): Yes

Funds Available in Current Budget? (Yes/No): Yes

Financial Implications:

Funds can be utilized from our current legal services budget(s).

Attachments

Letter
Resolution
Exhibit A



Shipman, Dixon & Livingston

A LEGAL PROFESSIONAL ASSOCIATION

215 WEST WATER STREET, P.O. BOX 310, TROY, OHIO 45373

www.sdlattorneys.com

TELEPHONE (937) 339-1500

FAX (937) 339-1519

Grant D. Kerber
Leneé M. Brosh
Andrew H. Johnston
Jared B. Chamberlain

April 1, 2024

L.H. Shipman (1874-1955)
F.L. Shipman (1906-1973)
Charles H. Sell, II (1947-2014)
William M. Dixon (1922-2014)

Via Electronic Mail Only – Rdzik@hhoh.org

Rick Dzik
Huber Heights City Manager

Retired

James R. Livingston
Robert C. Johnston

Re: Miami County Municipal Court Representation

Dear Mr. Dzik,

Thank you for the opportunity to present the City of Huber Heights, Ohio with a proposal to provide prosecutorial services for all offenses within the jurisdiction of the Miami County Municipal Court. Presently, the firm of Shipman, Dixon & Livingston Co., L.P.A. prosecutes all cases in the Miami County Municipal Court for the City of Troy, the Villages of Fletcher, West Milton, Bradford and Laura, and all of the unincorporated areas of Miami County.

Shipman, Dixon & Livingston Co., L.P.A. utilizes four attorneys as prosecutors, namely Leneé Brosh, Andrew Johnson, Andrew Wannemacher, and myself. When prosecuting, we work collaboratively with law enforcement agencies and are mindful of the needs of these agencies.


As the prosecutor for Huber Heights, my office would represent Huber Heights at the preliminary hearing for felonies, prosecute all aspects of misdemeanors and traffic cases, attend probation and probation revocation hearings, and provide counsel and assistance to the police department. Further, my office will make all required Marsy's Law victim notifications.

For these services, Shipman, Dixon & Livingston, Co., L.P.A., proposes a flat fee of \$7,500.00 annually, paid in quarterly installments in advance. For any appellate or extraordinary legal work, Shipman, Dixon & Livingston, Co., L.P.A., would bill at the rate of \$175.00/hour. From my experience, appellate and extraordinary work would be a rare occurrence.

I have enclosed a proposed Agreement. I would be happy to discuss this matter further with you and I am honored by your consideration.

Sincerely,

SHIPMAN, DIXON & LIVINGSTON CO., L.P.A.


Grant D. Kerber

GDK/pm
cc: Chris Conard
Enclosure

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

AUTHORIZING THE CITY OF HUBER HEIGHTS TO ENTER INTO AN AGREEMENT WITH SHIPMAN, DIXON, & LIVINGSTON CO., L.P.A. FOR PROSECUTORIAL SERVICES IN MIAMI COUNTY FOR THE CITY OF HUBER HEIGHTS, OHIO.

WHEREAS, the City Council has recently engaged the law firm of Coolidge Wall Co., L.P.A. for legal services as City Attorney/Law Director for the City of Huber Heights; and

WHEREAS, the City Council desires separate prosecutorial services for Miami County Municipal Court cases.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. By an affirmative vote of City Council, the Mayor is directed to execute on behalf of the City of Huber Heights an agreement substantially upon the same provisions contained in the attached as set forth in Exhibit A appointing Shipman, Dixon & Livingston Co., L.P.A. as legal counsel to represent the City on prosecutorial matters in the Miami County Municipal Court.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2024;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2024, by and between THE CITY OF HUBER HEIGHTS (“City”) and SHIPMAN, DIXON & LIVINGSTON CO., L.P.A. (the “Law Firm”), under the following circumstances:

WHEREAS, City requires legal services for general prosecution matters for City matters in Miami County Ohio; and

WHEREAS, the Law Firm represents that it possesses the expertise and personnel necessary to furnish such services to City; and

WHEREAS, City desires to engage the Law Firm to perform such services, and Law Firm desires to accept such engagement;

NOW, THEREFORE, the parties agree as follows:

1. **Duties.** The Law Firm shall provide legal representation to City as is necessary from time to time. Such legal representation shall include, but not be limited to, representing the City in all prosecutions under City ordinances and state statutes in all prosecutions of City ordinances and State statutes in Miami County Municipal Court, which originated in Huber Heights. The Law Firm shall provide such service and devote such time as is necessary in order to represent the City effectively on all ordinance and statutory violations filed in Miami County Municipal Court, which originated in Huber Heights.

The Law Firm shall also provide, upon request, reasonable reports from time to time as to the number and type of cases handled, attorneys involved, number of cases tried as opposed to those disposed of by agreement, etc., as may be reasonably requested by the City. No additional legal fees will be due for preparation of such reports.

In the event the Law Firm is required to write exhaustive legal briefs or prepare for appellate arguments on cases that may be appealed to the Court of Appeals or to the Supreme Court, City shall compensate the Law Firm at the rate of \$175.00/hour.

2. **Fees.** Attorneys with the Law Firm shall furnish services to City under this Agreement at a cost to the City of \$7,500.00 per year payable in quarterly installments in advance. In the event the City requests the Law Firm to provide services beyond the prosecution services noted above, the Law Firm will provide a written proposal of a fixed price or hourly rates for such services.

3. **Expense Advances.** The Law Firm shall be reimbursed for costs advanced in furtherance of pending cases, including but not limited to court costs, mileage, expert witness fees, delivery costs, court reporter charges and other necessary advances, duplicating expenses,

telephone charges and postage are included in the above fee.

4. **Invoices.** The Law Firm shall submit invoices to City on a quarterly basis. After receiving approval of such invoices from the Law Director or his/her designate, City shall pay Law Firm within thirty (30) days of its receipt of such invoice.

5. **Term.** The term of this Agreement shall commence on the date first above written, and shall continue until terminated by written notice from either party, in which case such termination shall be effective on the date stated in the notice.

6. **Change in Key Personnel.** Grant D. Kerber is hereby designated as "City Prosecutor for Miami County" on behalf of the Law Firm and shall be the primary contact with the City. In the event of the termination or cessation of employment of Mr. Kerber, regardless of cause, the Law Firm shall promptly notify City of this event. Law Firm may have other attorneys provide services from time to time, provided such attorneys are designated in writing to the City and if applicable the Court. The City may refuse to accept any attorneys by written notice to the Law Firm. In such case, the Law Firm will designate a different attorney and not assign the refused attorney further.

7. **Termination.** This Agreement may be terminated by either party upon 30 days prior written notice to the other party.

8. **Records.** Any records or files pertaining to any matter handled by the Law Firm for City under this Agreement remains at all times the property of City. In the event of termination of this Agreement, the Law Firm shall return all records, files and any and all work product resulting from work performed for City under this Agreement.

9. **Assignment.** This Agreement may not be assigned by either party.

10. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Ohio.

11. **Modification.** This Agreement may be modified only by an amendment signed by both parties.

12. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

WITNESSES:

CITY OF HUBER HEIGHTS, OHIO

SHIPMAN, DIXON & LIVINGSTON, CO., LPA.

By: _____

Its: _____

Date: _____

AI-10016

City Council Meeting

**New Business F.
City Manager**

Meeting Date: 04/22/2024

City Staffing Levels/Table Of Organization

Submitted By: Katie Knisley

Department: City Manager **Division:** Human Resources

Council Committee Review?: Council **Date(s) of Committee Review:** 04/16/2024
Work
Session

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Amending And/Or Establishing The City Of Huber Heights Organizational Chart And Authorizing The New Personnel Staffing Levels As Detailed Below.
(first reading)

Purpose and Background

This legislation amends and establishes the City's organizational chart and authorizes new personnel staffing levels.

Amendments include the following:

- New FT position of Firefighter/Paramedic Recruit for the Fire Division
- New FT position of Event and Program Coordinator for the Parks Department
- Differentiating the seasonal laborers in the Parks Department - two for maintenance and two Program Leaders - also changing the number of positions to the max number of hours worked by all those working as seasonal laborers within the Parks Department.

Also included is the Firefighter/Recruit Program for the description of how the program will work and the benefits that will be provided to the full-time Firefighter/Paramedic Recruit positions.

Fiscal Impact

Source of Funds: Various Funds

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Fire Division Recruit Program
Resolution
Table Of Organization

Three Step Process to capture students from High School for transition into full-time Firefighter/Paramedic Recruit Program.

Apprentice:

3 person program
High School Students enroll in career program for Firefighting / EMS
Identified at the end of Junior Year
Unpaid Position
Serving minimum of 16 hours per month with maximum of 64 hours
Familiarization with the HHFD and the career of a Firefighter / Paramedic

Intern:

3 Person Program
Ideally transitions from graduating Recruit Intern Program
Possesses an Ohio Firefighter II certification.
Focus on obtaining EMT certification as soon as possible.
Enrolling in Paramedic Program
Works minimum of 96 hours per month
Will receive wages only, no other benefits of employment

Firefighter/Paramedic Recruit:

3 Person Program – Full-time, non-exempt, non-union
Candidates can be taken from current process eligibility list
Ideally Transitions from Intern
Possesses an Ohio Firefighter II certification.
Must first successfully complete first 2 semesters of Paramedic Program
Program will run from May through January
Will be allowed to attend the Paramedic Course on-duty.
Will be afforded some duty time to serve hospital clinicals.
Will be assigned to 24/48-hour work schedule with 6 EDOs (53 hour work week)
If Paramedic certification is not obtained by February 1st, the intern is removed.
If Paramedic Certification is obtained, may participate in internal process to become full-time Firefighter / Paramedic
Receive Healthcare Benefits afforded to full-time employees
Enrollment in appropriate public pension
Wage Rate will be equal to 15% below a Step 1 Firefighter/Paramedic

Accrue Paid Vacation, and Personal Leave at a rate of 15% below the 24/48 personnel rate; sick leave at 6.1 hours.

If openings would not exist in full-time firefighter / paramedic ranks for a full-time recruit to transition into after completing all requisite requirements:

The fully qualified Intern (FF2/Paramedic) may be transitioned to full-time FF/P position. Intern positions for that year will be reduced by the number of fully qualified interns transitioned into firefighter / paramedic positions until an opening exists in the full-time Firefighter / Paramedic ranks which will be absorbed by the newest intern who transitioned into a firefighter / paramedic.

These positions of Apprentice, Intern, and Recruit are not permanent/regular full-time positions.

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

AMENDING AND/OR ESTABLISHING THE CITY OF HUBER HEIGHTS ORGANIZATIONAL CHART AND AUTHORIZING THE NEW PERSONNEL STAFFING LEVELS AS DETAILED BELOW.

WHEREAS, the citizens of Huber Heights require the efficient and effective delivery of municipal services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The attached organizational chart, personnel staffing levels, and position control numbers as established hereafter is hereby adopted.

Section 2. The authorized personnel staffing levels for the Clerk of Council are as follows.

<u>City Council</u>	<u>No.</u>	<u>Position Control No.</u>	<u>Pay Grade</u>
Clerk of Council	1	504-101-2-2-01-F	50
Deputy Clerk of Council	1	504-202-1-2-01-F	25
Public Records Technician	1	504-213-1-2-01-P/H	20

Section 3. The authorized personnel staffing levels for the City Manager’s Office are as follows:

<u>City Manager’s Office</u>	<u>No.</u>	<u>Position Control No.</u>	<u>Pay Grade</u>
City Manager	1	505-100-2-2-01-F	per contract
Assistant City Manager/Director of Public Services	1	505-117-2-2-01-F	75
Assistant to City Manager	1	505-618-2-2-01-F	40
Administrative Assistant III	1	505-209-2-2-01-F	25
Communications Coordinator	1	505-615-2-1-01-F	40

Section 4. The authorized personnel staffing levels for the Department of Public Safety are as follows:

<u>Department of Public Safety</u>	<u>No.</u>	<u>Position Control No.</u>	<u>Pay Grade</u>
Director of Public Safety	1	505-116-2-2-01-F	75

<u>Division of Fire</u>			
Fire Chief	1	102-401-2-2-01-F	70
Medical Director/Wellness Coordinator	1	102-407-2-2-01-F	60
Battalion Chief	4	102-403-1-1-01-- 04F	PS
Captain	5	102-402-1-1-01—05F	PS
Fire Lieutenant	9	102-404-1-1-01--9-F	Contract
Firefighter/Paramedic	42	102-405-1-1-01—42-F	Contract
Firefighter/Paramedic Recruit	3	102-412-1-1-01—03-F	PS
Administrative Assistant III	2	102-200-1-2-01-- 02-F	25
Administrative Assistant I	1	102-200-1-2-01-P/H	10
Fire Inspector	1	102-501-1-2-01-F	30
Fire Inspector	3	102-501-1-2-01- 03-P/H	30
Fire-Prevention Manager/Plans Review	1	102-502-1-2-01-P/H	50
Fire Fleet/Facility Mgt. Clerk	1	102-503-1-2-01-P/H	10
Auxiliary \$1.00 per year	30	102-411-3-0-01--30-V	V
Chaplains – Fire	2	102-601-3-0-01--02-V	V
Medical Advisor	1	102-604-3-0-01-V	V

Division of Police

Police Chief	1	101-406-2-2-01-F	70
Deputy Police Chief	1	101-411-2-2-01-F	60
Police Lieutenant	3	101-408-1-1-01--03-F	Contract
Police Sergeant	8	101-409-1-1-01--08-F	Contract
Police Officer	45	101-410-1-1-01--45-F	Contract
Administrative Assistant III	1	101-200-1-2-01-F	25
Administrative Assistant II	1	101-213-1-2-01-F	20
Police Accreditation Technician	1	101-515-1-1-01-F	30
Police Records Clerks	2	101-204-1-1-01--02-F	Contract
Police Evidence/Fleet Mgt. Clerk	2	101-205-1-2-02-P/H	20
Communications/Records Manager	1	101-611-2-1-01-F	45
Communications/Records Supervisor	2	101-613-1-1-02-F	35
Communications Officer	15	111-502-1-1-01-15-F	Contract
Chaplain – Police	3	101-601-3-0-01—03-V	V

Section 5. The authorized personnel staffing levels for the Department of Information Technology are as follows:

<u>Department of Information Technology</u>		<u>Position Control No.</u>	<u>Pay Grade</u>
Information Technology Director	1	509-105-2-2-01-F	60
Information Technology Systems Analyst	2	509-609-1-2-02-F	45
Information Technology Systems Analyst	1	509-609-1-2-01-P/H	45
GIS Technician	1	509-510-1-1-01-F	35

Section 6. The authorized personnel staffing levels for the Department of Finance are as follows:

<u>Department of Finance</u>	<u>No.</u>	<u>Position Control No.</u>	<u>Pay Grade</u>
Director of Finance	1	506-102-2-2-01-F	65

Division of Accounting

Deputy Director of Finance	1	506-602-2-2-01-F	50
Procurement Specialist	1	506-618-2-2-01-F	45
Accounting Generalist	2	506-603-2-2-02-F	45
Accounts Payable Technician	1	506-504-1-1-01-F	25
Payroll Technician	1	506-505-1-1-01-F	30
Account Technician	1	506-206-1-1-01 F	25

Division of Taxation

Tax Administrator	1	507-104-2-2-01-F	50
Assistant Tax Administrator	1	507-612-2-2-01-F	45
Tax Analyst	2	507-506-1-1-01--02-F	30
Tax Technician	6	507-507-1-1-01 -06-F	20
Administrative Assistant I	1	507-212-1-2-01- 01-F	10
Administrative Assistant I	1	507-212-1-2-01- 01P/H	10

Section 7. The authorized personnel staffing levels for the Department of Public Services are as follows:

<u>Department of Public Services</u>	<u>No.</u>	<u>Position Control No.</u>	<u>Pay Grade</u>
Director of Public Services	1	505-114-2-2-01-F	75

Division of Engineering

City Engineer	1	320-106-2-2-01-F	65
Assistant City Engineer	2	320-119-2-2-02-F	55
Civil Engineer	1	320-605-2-2-01-01-F	50
Engineering Technician	2	320-509-1-1- 02-F	35
Administrative Assistant III	1	320-200-1-2-01-F	25

Division of Public Works

Public Works Manager	1	401-108-2-2-01-F	60
Public Works Supervisor	2	401-109-1-1-02-F	50
Public Works Crew Leader	3	401-302-1-1-03-F	Contract
Vehicle & Equipment Mechanic	3	401-300-1-1-03-F	Contract
Maintenance Technician	21	401-301-1-1-21-F	Contract
Administrative Assistant III	1	401-200-1-2-01-F	25
Custodian	1	401-305-1-2-01-F	10
Custodian	1	401-305-1-2-01-P/H	10

Division of Code Enforcement

Code Enforcement Manager	1	310-621-2-1-01-F	45
Code Enforcement Officer II	1	310-513-1-1-01-01-F	35
Code Enforcement Officer I	4	310-513-1-2-01-04-P/H	20
Seasonal Laborer	2	310-305-1-2-01-02-S	S

Section 8. The authorized personnel staffing levels for the Department of Economic Development are as follows:

<u>Department of Economic Development</u>	<u>No.</u>	<u>Position Control No.</u>	<u>Pay Grade</u>
Economic Development Director	1	305-111-2-2-01-F	60
Economic Development Coordinator	1	305-614-2-1-01-F	40

Section 9. The authorized personnel staffing levels for the Department of Planning and Zoning are as follows:

<u>Department of Planning & Community Dev.</u>	<u>No.</u>	<u>Position Control No.</u>	<u>Pay Grade</u>
Planning & Community Dev. Director	1	310-121-2-2-01-F	60
City Planner	1	310-118-2-2-01-F	55
Administrative Assistant III	1	310-200-1-2-01-F	25
Administrative Assistant I	1	310-207-1-1-01-F	10
Administrative Assistant I	1	310-207-1-2-01-P/H	10

Section 10. The authorized personnel staffing levels for the Department of Human Resources are as follows:

<u>Department of Human Resources</u>	<u>No.</u>	<u>Position Control No.</u>	<u>Pay Grade</u>
Human Resources Director	1	510-120-2-2-01-F	60
Human Resources Specialist	2	510-617-1-1-02-F	40
Human Resources Assistant	1	510-514-1-2-01-P/H	30

Section 11. The authorized personnel staffing levels for the Department of Parks and Recreation Facilities are as follows:

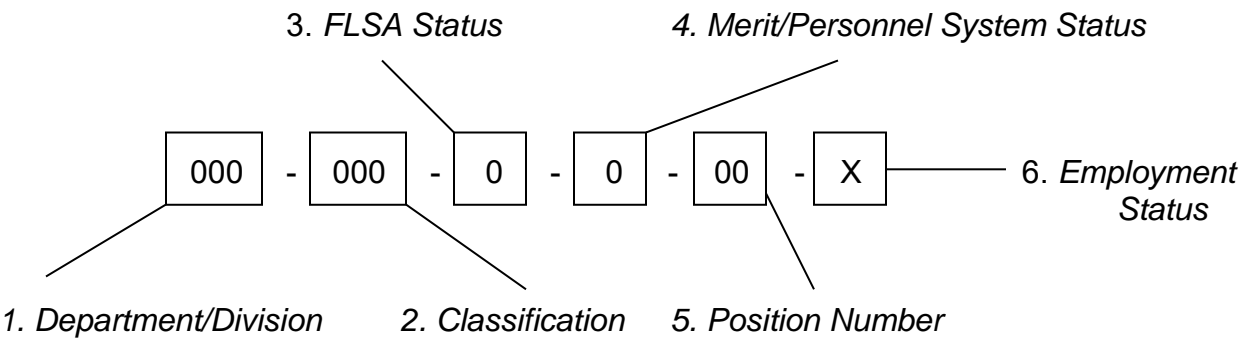
<u>Department of Parks and Recreation Facilities</u>	<u>No.</u>	<u>Position Control No.</u>	<u>Pay Grade</u>
Parks Manager	1	216-616-2-2-01-F	45
Event and Program Coordinator	1	216-516-1-1-01-F	30
Senior Center Program Coordinator	1	215-110-2 -2 -01-P/H	20
Seasonal Laborer – Music Center	125	219-306-1-2-01-125-S	S
Seasonal Laborer – Maintenance	2,000-hrs	216-303-1-2-01-S	S
Seasonal Laborer – Program Leader	1,000-hrs	216-303-1-2-01-S	S

Section 12. Council further ratifies and affirms any and all previous legislation of Council that established, abolished or altered the functions and structures of any administrative department.

Section 13. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 14. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Section 15. Position Control Number Explanation:



1. Department/Division: Number represents Fund Number in General Ledger:

101-Police	305-Economic Dev.	401-Public Works	507-Tax
102-Fire	310 Planning & Zoning	505-City Mgr.	509-I. T.
215-Senior Center	320-Engineering	506-Accounting	510-H.R
219 Parks & Recreation			

2. Classification: Number for classification or rank to which position is assigned, divided into defined series as shown below:

100-Administrative	300-Labor	500-Technical
200-Clerical	400-Sworn Safety	600-Professional

3. FLSA Status:

- 01-Non-exempt from minimum wage/overtime rules of FLSA (hourly)
- 02-Exempt from minimum wage/overtime rules of FLSA (salaried)
- 03-Unpaid Volunteer

4. Merit & Personnel System Status:

- 01-Position is in Non-exempt service of city per Section 8.02 of Charter
- 02-Position is in Exempt service of city per Section 8.02 of Charter

5. Position Number:

Unique two-digit number for each employment position authorized by this Resolution.

6. Employment Status:

- F-Full-time Position
- P-Part-time Position
- H-Hourly Position
- T-Temporary (created for specific time)
- S-Seasonal Position
- V-Volunteer Position

Passed by Council on the _____ day of _____, 2024;
_____ Yeas; _____ Nays.

Effective Date:

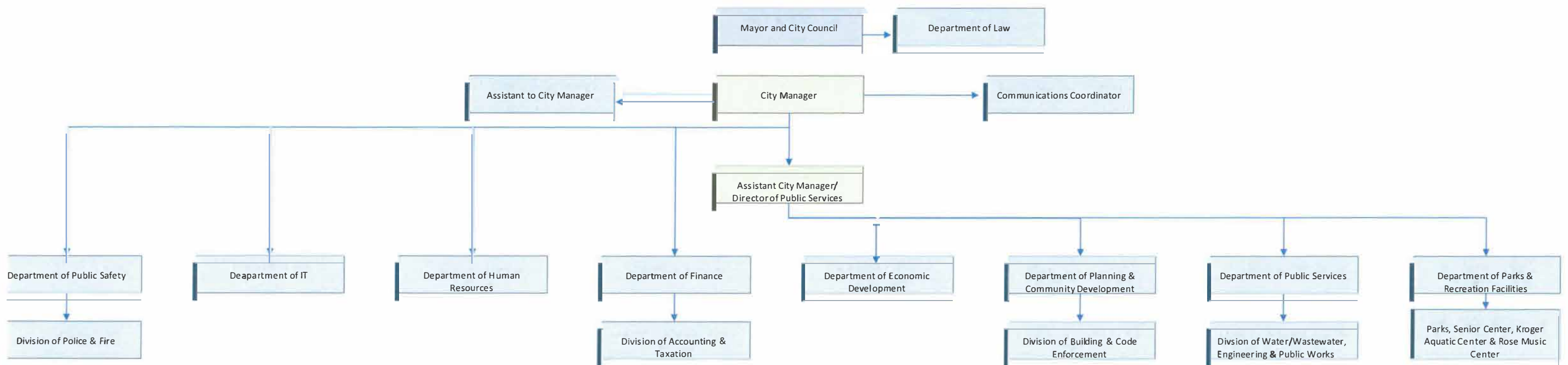
AUTHENTICATION:

Clerk of Council

Mayor

Date

Date



Authorized Staffing Levels: Revised April 16, 2024

City Council (FT):	2	Department of IT (FT):	4	Division of Accounting (FT):	7	Department of Planning (PT/H):	1	Department of Parks & Rec Facilities (FT):	2
City Council (PT/H):	1	Department of IT (PT/H):	1	Department of Finance (FT):	1	Department of Human Resources (FT):	3	Department of Parks * Rec Facilities (PT/H):	1
City Manager (FT):	5	Division of Public Works (FT):	32	Director of Public Safety (FT):	1	Department of Human Resources (PT/H):	1	Department of Parks & Rec Facilities (S):	129
Fire Division (FT):	65	Division of Public Works (PT/H):	1	Division of Engineering (FT):	7	Division of Code Enforcement (FT):	2	Department of Economic Development (FT):	2
Fire Division (PT/H):	6	Division of Taxation (FT):	11	Director of Public Service (FT):	1	Division of Code Enforcement (PT/H):	4		
Fire Division (Recruit):	3	Division of Taxation (PT/H):	1	Department of Planning (FT):	4	Division of Code Enforcement (S):	2		
Police Division (FT):	81								

AI-10017

City Council Meeting

**New Business G.
City Manager**

Meeting Date: 04/22/2024

City Salary Ranges/Wage Levels

Submitted By: Katie Knisley

Department: City Manager **Division:** Human Resources

Council Committee Review?: Council **Date(s) of Committee Review:** 04/16/2024
Work
Session

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Establishing And/Or Amending The Salary Ranges And Wage Levels For Employees Of The City Of Huber Heights, Ohio.
(first reading)

Purpose and Background

This legislation amends and establishes the salary ranges and wage levels of all non-union employees of the City.

Amendments include the following:

- New FT position of Firefighter/Paramedic Recruit for the Fire Division
- New FT position of Event and Program Coordinator for the Parks Department
- Inclusion of an Intern with a wage of up to \$20/hr
- Separated Section I into two sections: Transitional Positions is now Section I and Paid Intern Positions is now Section K

Fiscal Impact

Source of Funds: Various Funds

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

ESTABLISHING AND/OR AMENDING THE SALARY RANGES AND WAGE LEVELS FOR EMPLOYEES OF THE CITY OF HUBER HEIGHTS, OHIO.

WHEREAS, the citizens of Huber Heights require efficient and effective delivery of municipal services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The pay ranges, compensation procedures, and administrative rules for non-bargaining employees are hereby established.

Section 2. City Council shall be responsible for establishing the actual salaries for the City Manager, the Clerk of Council, and the Deputy Clerk of Council. The salary ranges of the City Manager, the Clerk of Council, and the Deputy Clerk of Council are set forth in the following plan document.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

THE CITY OF HUBER HEIGHTS

PERFORMANCE COMPENSATION PLAN FOR NON-BARGAINING EMPLOYEES

1. Compensation Philosophy

It is the city's philosophy to support and enhance organizational performance through a fair, objective, and equitable merit-based pay plan which will attract, retain, and motivate high performing non-bargaining employees.

2. General Administrative Responsibilities

The Human Resources Director, under the direction of the City Manager is responsible for the administration of the Performance Compensation Plan, including the processing of pay rate increases, the adjustment of pay for promotions, re-employments and reassignments, and the initiation of necessary revisions in pay ranges. The Human Resources Director is responsible for interpreting the application of the program to all pay issues which are not specifically covered by this ordinance, using the principles expressed herein as a policy guide.

3. Plan Administration

- A. Market Surveys. The Human Resources Director shall conduct market surveys every three years or from time to time in order to collect updated comparable and competitive salary data, recommend revised pay structures and pay ranges as necessary, and recommend revised merit-based pay procedures. Such surveys and recommendations shall be conducted as positions become vacant, or upon request of a department/division head, or upon the initiation of the Human Resources Director when it is determined necessary for the effective administration of the Performance Compensation Plan.
- B. Structure Adjustments. Periodically, the Human Resources Director may recommend pay range adjustments to the City Manager in keeping with labor market trends, who in turn may make appropriate recommendations to City Council. Pay ranges (except for seasonal positions) shall include a minimum and maximum amount stated either as an annual salary or hourly rate.

- C. Assignment of Positions to Pay Ranges. The Human Resources Director shall be responsible for assigning each city employment position to a pay range based on market data and the City Manager’s determination of the strategic value of positions and/or employees to the organization. Strategic value considerations may involve turnover, skill needs, attraction and retention issues, supply and demand for qualified applicants for particular positions, the impact of specific positions and employees on the organization’s mission, and/or other relevant factors.

4. Applicability

This resolution and Performance Compensation Plan shall apply to and is the sole authority for setting rates of pay for the following categories of positions and employees: All regular full-time, regular part-time, provisional full-time, provisional part-time, hourly, temporary, and seasonal employees of the City of Huber Heights, Ohio except: the Mayor; members of City Council, the City Law Director; and all employees who are members of a collective bargaining unit recognized by the State Employment Relations Board.

5. Positions and Pay Ranges

<i>Pay Grade</i>	<i>Minimum Pay</i>	<i>Maximum Pay</i>
10	\$15.6591	\$22.8376
Custodian Administrative Assistant I Fire Fleet/Facility Management Clerk	\$32,570.93	\$47,502.21
20	\$17.9813	\$27.6315
Administrative Assistant II Public Records Technician Tax Technician Police Evidence/Fleet Management Clerk Senior Center Program Coordinator Code Enforcement Officer I	\$37,401.10	\$57,473.52
25	\$20.8480	\$30.3947
Account Technician Accounts Payable Technician Administrative Assistant III Deputy Clerk of Council	\$43,363.84	\$63,220.98
30	\$21.3206	\$31.8873
Police Accreditation Technician Payroll Technician Tax Analyst Event and Program Coordinator Fire Inspector Human Resources Assistant	\$44,346.85	\$66,325.58
35	\$24.6600	\$35.1153
GIS Technician Engineering Technician Code Enforcement Officer II Communications/Records Supervisor	\$51,292.80	\$73,039.82
40	\$26.5534	\$38.1949
Assistant to City Manager Communications Coordinator Economic Development Coordinator Human Resources Specialist	\$55,231.07	\$79,445.39

45		\$26.6568	\$40.7918
Accounting Generalist Code Enforcement Manager Assistant Tax Administrator IT Systems Analyst Communications/Records Manager Parks Manager Procurement Specialist		\$55,446.14	\$84,846.94
50		\$34.4624	\$48.4805
Deputy Director of Finance Fire Prevention Manager/Plans Review Tax Administrator Public Works Supervisor Clerk of Council Civil Engineer		\$71,681.79	\$100,839.44
55		\$38.4696	\$53.8616
Assistant City Engineer City Planner		\$80,016.77	\$112,032.13
60		\$42.3125	\$59.2354
Human Resources Director IT Director Public Works Manager Economic Development Director Planning & Community Dev. Director Medical Director/ Wellness Coordinator Deputy Police Chief		\$88,010.00	\$123,209.63
65		\$46.5458	\$67.1190
City Engineer Director of Finance		\$96,815.26	\$139,607.52
70		\$53.5328	\$74.9459
Fire Chief Police Chief		\$111,348.22	\$155,887.47
75		\$48.6662	\$82.4363
Assistant City Manager/Director of Public Services Director of Public Safety		\$101,225.70	\$171,467.50
80			
City Manager			Per Contract

<i>Position</i>	<i>Minimum Pay</i>	<i>Mid-point Pay</i>	<i>Maximum Pay</i>
Seasonal Laborer	N/A	N/A	\$20.00
Intern	N/A	N/A	\$20.00
Public Safety (PS)			
	Step 1	Step 2	
Battalion Chief	2% below Step 2	14% above top step Fire Lieutenant	
Fire Captain	2% below Step 2	6% above top step Fire Lieutenant	
Firefighter/Paramedic Recruit	15% below Step 1 FF/P	N/A	

Employees are paid bi-weekly on an hourly or salary basis. The bi-weekly pay rate for salaried employees is a calculation of the annual pay rate divided by 26 and the bi-weekly amount for hourly employees is a calculation of the annual pay rate divided by 2080 hours, to include those budget years with 27 pay periods. The bi-weekly amount for part-time/hourly employees, working less than a 40-hour week in a 2080 work year, is a calculation of the annual pay rate multiplied by the number of hours worked.

6. Compensation Adjustments

All of the following pay rate adjustments are subject to funding by City Council based upon the availability of funds and economic and budget projections and priorities.

- A. New Hires. Newly hired employees shall be hired at a rate of pay between the minimum and maximum of the applicable pay range. The exact pay rate shall be based on the employee's education, experience, knowledge, skills, and abilities. Prior to the making of a conditional offer of employment to a prospective new or newly promoted employee, the department/division head shall recommend a starting rate of pay which shall be forwarded to the Human Resources Manager for review and then to the City Manager for final action.
- B. Completion of Probation. Department/division heads may recommend a pay increase, not to exceed 2%, for newly hired or promoted employees upon the successful completion of probation or one year of employment. The department/division head should consider the employee's starting rate as related to their pay range, the pay of other employees in the position and in the employee's division, and the employee's performance in making this decision. Any such increase, upon approval by the City Manager, shall be paid from the division's regular payroll budget.
- C. Promotion. Employees who are promoted to positions with a higher level of duties and responsibilities shall be placed at a rate of pay between the minimum and maximum of the applicable pay range.
- D. Demotion. Employees who are demoted to positions with a lower level of duties and responsibilities because of less than satisfactory performance, failure to meet job requirements, or for disciplinary reasons shall be placed at the minimum of the new range, or receive a pay decrease not to exceed 10%, whichever results in the least loss of pay.
- E. Reassignment. Employees who are reassigned to positions with a lower pay grade through no fault of their own (i.e., reorganization, job abolishment, reduction-in-force, or market/technological factors, etc.), shall remain at their current rate of pay, or shall be placed at the maximum of the pay range, whichever is less. An employee who voluntarily requests and is granted a reassignment to a position with a lower pay grade will have their pay adjusted between the minimum and maximum of the lower pay grade.
- F. Temporary Upgrade to a Higher Position. Employees who are temporarily assigned (for a minimum of 7 consecutive calendar days) to perform all of the duties and assume all of the responsibilities of a position due to a position vacancy or an approved leave of absence of a position incumbent shall be receive a pay increase not to exceed 5%. Temporary upgrades shall be recommended to the Human Resources Manager and approved by the City Manager in advance.
- G. Modification of Pay Ranges. When a position's pay range is modified upward, based on market data and/or strategic value, and the position is occupied, the incumbent shall retain his/her existing pay rate or be placed at the minimum of the new pay range, whichever is greater. When a position's pay range is modified downward, and the position is occupied, the incumbent shall remain at his/her current rate of pay.
- H. Transfers. Employees who transfer to another job in an identical pay range or to an identical position in another division in the same pay range, there will be no change in the employee's rate of pay.
- I. Transitional. In cases deemed necessary and appropriate by the City Manager, an appointment to a position in the non-exempt service, which is not yet vacated, but which position incumbent has provided the City Manager with a written notice of resignation or retirement on a date certain, which date is within 90 days following the date of such appointment.

- J. In the event there is a planned retirement, separation from service, or long-term leave of absence for medical or military service reasons, to ensure efficient and uninterrupted City operations, the City Manager may increase the permanent staffing of the department, or division, effected by the planned retirement or separation from service by one position per expected vacancy for the expected duration of that vacancy.
- K. Paid Intern Positions: In cases deemed necessary and appropriate by the City Manager, an appointment of a student intern may be made based on skill, experience, and the scope of the project to be completed

7. Compensation Increases

The compensation of each employee shall be reviewed annually by the department director/division manager, or Mayor and Council, for the purpose of determining which employees may be entitled to a performance-based increase. All personnel records, performance, and experience shall be considered in making recommendations with major emphasis placed on the evaluation. The City Manager or Mayor and Council is authorized to pay non-union employees a performance-based increase provided that said increase is within the approved salary range for the respective position. The performance-based increase may also be provided in the form of a bonus. The annual performance-based increase is determined upon the availability of funds and economic and budget projections and priorities.

Providing the Collective Bargaining Agreements receive an annual increase, the City shall adjust the compensation of all non-union employees, to include employees of the City Council, to reflect the same annual increase within the respective year.

To be eligible for a performance-based increase, an employee must be employed with at least six months of continuous service before the merit award date.

An employee whose pay is at the maximum of the compensation range may not be granted an increase that would cause the base compensation to exceed the maximum of the range for that position. The employee would continue to be eligible for an annual increase and performance bonus, with a lump sum increase based upon the percentage increase. The pay range, however, does not change until a new market study is conducted, every three years, and a recommendation is made to revise pay structures and pay ranges as necessary

Passed by Council on the ____ day of _____, 2024;
____ Yeas; ____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-10019

New Business H.

City Council Meeting

City Manager

Meeting Date: 04/22/2024

New Public Works Division Facility - Award Contract

Submitted By: Linda Garrett

Department: Assistant City Manager

Council Committee Review?: Council Work Session

Division: Public Works

Date(s) of Committee Review: 04/16/2024

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Award A Contract For Services Related To The Construction Of A New Public Works Division Facility.
(first reading)

Purpose and Background

This legislation authorizes the City Manager to award a contract for services related to the construction of a new Public Works Division Facility.

Fiscal Impact

Source of Funds: Public Works Division Budget

Cost: \$21,000,000

Recurring Cost? (Yes/No): No

Funds Available in Current Budget? (Yes/No): Yes

Financial Implications:

Attachments

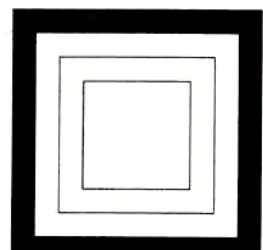
Presentation

Resolution



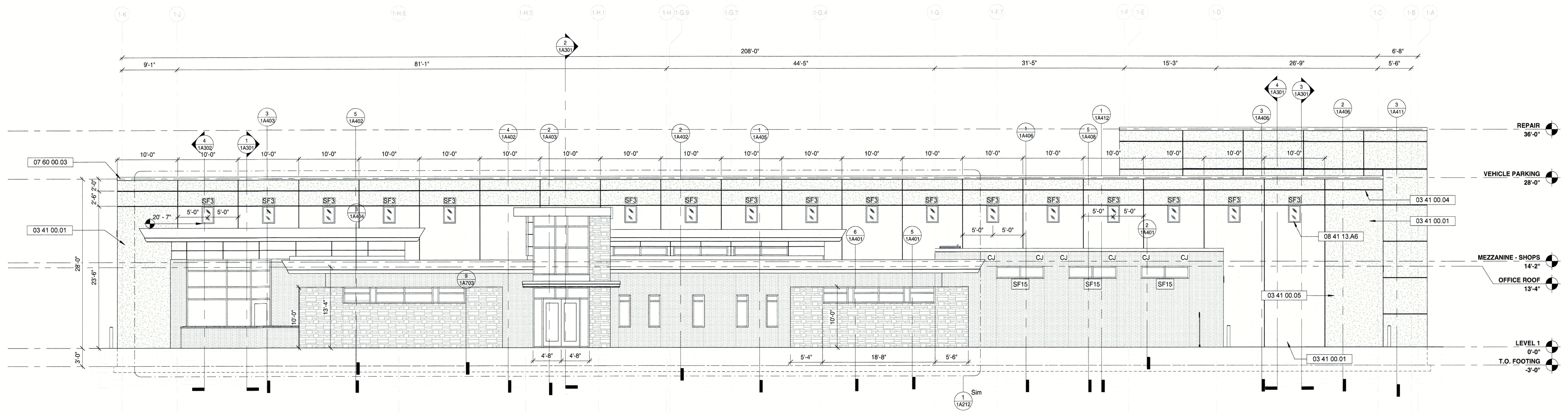
New DPW Facility and Support Buildings

City of Huber Heights

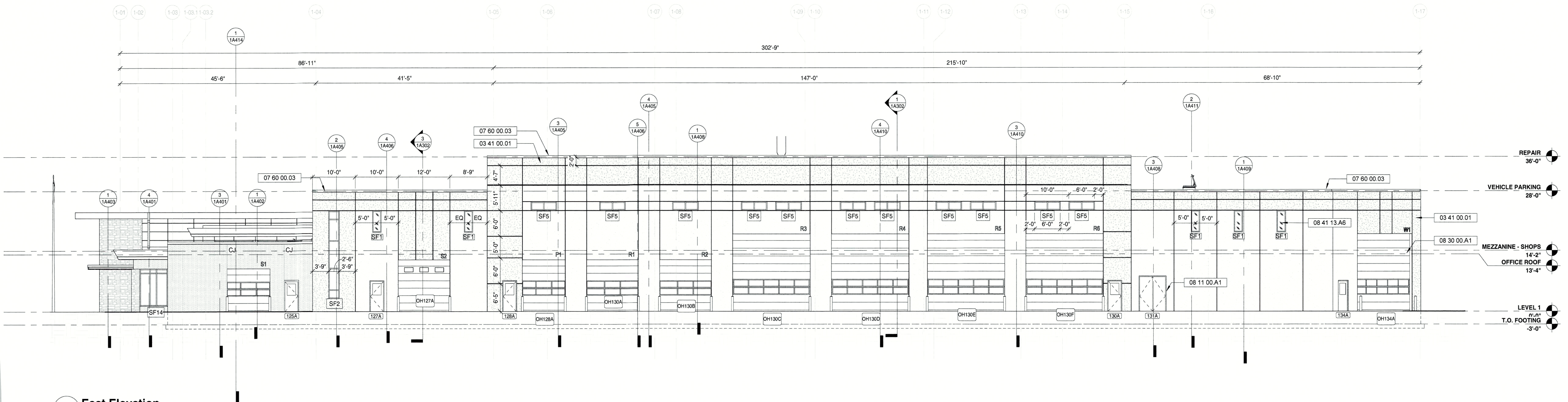


KUENY ARCHITECTS, LLC

10505 CORPORATE DRIVE - SUITE 100 PLEASANT PRAIRIE, WI 53158

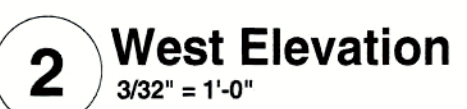


1 South Elevation
1/8" = 1'-0"



3 East Elevation
3/32" = 1'-0"

03 41 00.01	INSULATED PRECAST CONCRETE WALL PANEL; THICKNESS PER DETAILS (MIN. R-22)
03 41 00.04	PRECAST CONCRETE PANEL REVEAL; REFER TO EXTERIOR ELEVATIONS
03 41 00.05	PRECAST CONCRETE PANEL; DARK CEMENT ACCENT PANEL; REFER TO SPECIFICATIONS
05 21 00.01	STEEL BAR JOIST; SEE STRUCTURAL FRAMING PLANS
07 53 00.04	30" X 96" ROOF ACCESS HATCH WITH SHIP'S LADDER; PROVIDE ALL CURBING AND FLASHING AS NEEDED; ROOF HATCH DOOR TO INCLUDE PAINTED FINISH
07 60 00.03	SHEET METAL WALL CAP; PROVIDE STIFFENING BEAD AT HEIGHTS OVER 12'
08 11 00.01	HOLLOW METAL DOOR FRAME; SEE SCHEDULES
08 30 00.01	OVERHEAD SECTIONAL DOOR; SEE SPECIFICATIONS
08 30 00.03	OVERHEAD DOOR FULL VISION PANEL; REFER TO EXTERIOR ELEVATIONS
08 41 13.66	ALUMINUM STOREFRONT WINDOW SYSTEM; SEE SPECIFICATIONS
10 14 00.01	ALUMINUM FLAT CUT LETTERING; LETTERING HEIGHT PER ELEVATIONS



03 41 00.01	INSULATED PRECAST CONCRETE WALL PANEL; THICKNESS PER DETAILS (MIN. R-22)
03 41 00.02	PRECAST CONCRETE PANEL REVEAL; REFER TO EXTERIOR ELEVATIONS
04 20 00.02	FACE BRICK; PROVIDE ALL TIES, WEEPS, AND FLASHING; SEE SPECIFICATIONS
04 20 00.07	8"X8"X16" CMU WALL; PROVIDE ALL REINFORCING AS REQUIRED
04 20 00.08	NATURAL STONE WALL FACE; REFER TO ELEVATIONS FOR ELEVATIONS
04 20 00.10	12"X8"X16" CMU WALL; PROVIDE ALL REINFORCING AS REQUIRED
04 20 00.13	CAST STONE WALL CAPPING AT PATIO WALL
07 21 00.04	TAPERED ROOF INSULATION; MIN. 1 1/2" SLOPE; SEE ROOF PLAN
07 21 00.07	(2) LAYERS OF 4" RIGID ROOF INSULATION; LAYERS STAGGERED (MIN. R-38)
07 53 00.01	SINGLE PLY E.P.O.M. MEMBRANE ROOFING SYSTEM - FULLY ADHERED
07 60 00.01	ARCHITECTURAL METAL PANEL WALL SYSTEM; SEE SPECIFICATIONS
07 60 00.02	ARCHITECTURAL 1" METAL SOFFIT PANEL SYSTEM; SEE SPECIFICATIONS
07 60 00.03	SHEET METAL WALL CAP; PROVIDE STIFFENING BEAD AT JOINTS OVER 12"
07 60 00.06	SHEET METAL FLASHING; REFER TO FASCIA DETAILS AS REQUIRED; STIFFENING BEAD AT ALL FACES OVER 10"
08 41 13.44	ALUMINUM STOREFRONT WINDOW AND DOOR SYSTEM; SEE SPECIFICATIONS
08 41 13.61	ALUMINUM STOREFRONT WINDOW SYSTEM; SEE SPECIFICATIONS
08 60 00.01	1" LOW-E INSULATED GLAZING UNIT



CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

AUTHORIZING THE CITY MANAGER TO AWARD A CONTRACT FOR SERVICES RELATED TO THE CONSTRUCTION OF A NEW PUBLIC WORKS DIVISION FACILITY.

WHEREAS, the City of Huber Heights will require construction services for a new Public Works Division Facility and these services are estimated at an amount not to exceed \$21,000,000.00; and

WHEREAS, these services are the required continuum of previously agreed services to assure the safety and well-being of occupants; and

WHEREAS, bids for providing construction services for a new Public Works Division Facility on specified City properties were received on March 26, 2024.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized to award a contract for services related to the construction of a new Public Works Division Facility on specified City properties to Brumbaugh Construction at 3520 State Route 49, P.O. Box 309, Arcanum, Ohio 45304. This proposal and contract shall be for the period from award of the contract to project completion and shall be in an amount not to exceed \$21,000,000.00 subject to the availability of funds.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2024;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-10020

New Business I.

City Council Meeting

City Manager

Meeting Date: 04/22/2024

Governance Center Project - Phase 1 - Solicit Bids

Submitted By: Hanane Eisentraut

Department: Assistant City Manager

Council Committee Review?: Council Work Session

Division: Engineering

Date(s) of Committee Review: 04/16/2024

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Solicit, Advertise And Receive Bids From Qualified Firms For The Huber Heights Governance Center Project - Phase 1.
(first reading)

Purpose and Background

This legislation will allow the City to solicit, advertise, and receive bids for the Huber Heights Governance Center Project - Phase I.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024- R-

AUTHORIZING THE CITY MANAGER TO SOLICIT, ADVERTISE AND RECEIVE BIDS FROM QUALIFIED FIRMS FOR THE HUBER HEIGHTS GOVERNANCE CENTER PROJECT - PHASE 1.

WHEREAS, the City of Huber Heights recognizes its obligation to provide efficient operations and services; and

WHEREAS, a competitive bidding process would be utilized to obtain a reputable firm to provide services related to the construction of this project; and

WHEREAS, Council has determined to proceed with this project during the 2024 construction season; and

WHEREAS, funds are available to cover the cost of this project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized to solicit, advertise and receive responses from qualified firms for the construction of the Huber Heights Governance Center Project - Phase 1.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2024;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-10021

New Business J.

City Council Meeting

City Manager

Meeting Date: 04/22/2024

Supplemental Appropriations

Submitted By: Jim Bell

Department: City Manager **Division:** Finance/Tax

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 04/16/2024

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

An Ordinance Authorizing Transfers Between Various Funds Of The City Of Huber Heights, Ohio And Amending Ordinance No. 2024-O-2625 By Making Supplemental Appropriations For Expenses Of The City Of Huber Heights, Ohio For The Period Beginning January 1, 2024 And Ending December 31, 2024.

(first reading)

Purpose and Background

The supplemental appropriations are for the following purposes:

- \$67,769 for reimbursement of overtime by Montgomery County dispatchers to assist the remote dispatching by City of Huber Heights staff following the cyber attack.
- \$5,000 for Fire equipment (matching a donation from a resident).
- \$7,513 transfer from FEMA Fund for grant monies to reimburse overtime by Fire employees following Hurricane Idalia.
- \$21,000,000 for construction of a new Public Works Division Facility.
- \$72,070 for debt expenses for a sewer jet/vacuum truck.

Fiscal Impact

Source of Funds: Various Funds

Cost: \$21,139,839

Recurring Cost? (Yes/No): No

Funds Available in Current Budget? (Yes/No): Yes

Financial Implications:

Notes will be issued for construction of the PW Facility in addition to the original \$5 million issued in November 2023.

Attachments

Ordinance

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2024-O-

AUTHORIZING TRANSFERS BETWEEN VARIOUS FUNDS OF THE CITY OF HUBER HEIGHTS, OHIO AND AMENDING ORDINANCE NO. 2024-O-2625 BY MAKING SUPPLEMENTAL APPROPRIATIONS FOR EXPENSES OF THE CITY OF HUBER HEIGHTS, OHIO FOR THE PERIOD BEGINNING JANUARY 1, 2024 AND ENDING DECEMBER 31, 2024.

WHEREAS, supplemental appropriations for expenses of the City of Huber Heights must be made for appropriations of funds for various 2024 operating and project funding.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. Authorization is hereby given to transfer certain monies up to amounts not exceeding those shown and for the purposes cited in Exhibit A, and such authorization applies to any and all such transfers necessary and effected after January 1, 2024.

Section 2. Ordinance No. 2024-O-2625 is hereby amended as shown in Exhibit B of this Ordinance.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2024;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A

<i>Transfer:</i>			
<u>Amount</u>	<u>Fund From</u>	<u>Fund To</u>	<u>Purpose</u>
\$ 7,513.00	251 FEMA	210 Fire	Grant reimbursement for overtime hours related to Hurricane Idalia

EXHIBIT B

AMENDING ORDINANCE NO. 2024-O-2625 BY MAKING APPROPRIATIONS FOR EXPENSES OF THE CITY OF HUBER HEIGHTS, OHIO FOR THE PERIOD BEGINNING JANUARY 1, 2024 AND ENDING DECEMBER 31, 2024.

- 1) Section 1 of Ordinance No. 2024-O-2625 is hereby amended to reflect an increase in the appropriations of the 101 General Fund, as follows:
 - b. Subsection g) Central Services, Operations and Capital of \$67,769.00
- 2) Section 6 of Ordinance No. 2024-O-2625 is hereby amended to reflect an increase in the appropriations of the 210 Fire Fund, as follows:
 - a. Subsection a) Fire, Operations and Capital of \$5,000.00
- 3) Section 25 of Ordinance No. 2024-O-2625 is hereby amended to reflect an increase in the appropriations of the 251 FEMA Fund, as follows:
 - a. Subsection b) Non-Departmental, Transfers of \$7,513.00
- 4) Section 31 of Ordinance No. 2024-O-2625 is hereby amended to reflect an increase in the appropriations of the 406 Capital Improvement Fund, as follows:
 - a. Subsection c) Capital, Operations and Capital of \$21,000,000.00.
- 5) Section 45 of Ordinance No. 2024-O-2625 is hereby amended to reflect an increase in the appropriations of the 551 Sewer Fund, as follows:
 - a. Subsection e) Non-Departmental, Debt Service of \$72,070.00.

General Fund	\$67,769.00
Fire Fund	\$5,000.00
FEMA Fund	\$7,513.00
Capital Improvement Fund	\$21,000,000.00
Sewer Fund	\$72,070.00

AI-10018

New Business K.

City Council Meeting

City Manager

Meeting Date: 04/22/2024

Disposal Of Surplus Vehicles

Submitted By: Linda Garrett

Department: Assistant City Manager

Council Committee Review?: Council Work Session

Division: Public Works

Date(s) of Committee Review: 04/16/2024

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Declaring Certain City Property As No Longer Required For Municipal Purposes As Surplus And Authorizing Disposal Of Said Property.
(first reading)

Purpose and Background

The Public Works Division requests approval for the disposal of surplus City vehicles.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

DECLARING CERTAIN CITY PROPERTY AS NO LONGER REQUIRED FOR MUNICIPAL PURPOSES AS SURPLUS AND AUTHORIZING DISPOSAL OF SAID PROPERTY.

WHEREAS, the City of Huber Heights is in possession of certain property including City vehicles and appurtenant equipment assigned to various City departments/divisions; and

WHEREAS, the property is no longer required for municipal purposes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. Consistent with the provisions of the Ohio Revised Code Section 721.15 and applicable sections of the Huber Heights Codified Ordinances and purchasing procedures, the following equipment is declared surplus, no longer required for municipal purposes, and authorization is hereby provided to dispose of the property consistent with the provisions of the Huber Heights Codified Ordinances.

YEAR/MAKE/MODEL	VIN #
2015 Ford F-450	1FDUF4HYXFEB13236
2015 Ford F-350	1FDRF3H60FED32320
2017 Ford F-250	1FT7W2B65HEC46759
2010 Ford Econoline	1FMNE1BL4ADA12663

Section 2. Authorization is hereby provided to the City Manager to dispose of the listed surplus item(s) on an online auction site or in such other manner as authorized by law.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights

Passed by Council on the _____ day of _____, 2024;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-10013

New Business L.

City Council Meeting

City Manager

Meeting Date: 04/22/2024

Homestead Development, LLC - Purchase/Sales Agreement - State Route 201, LLC Acres

Submitted By: Bryan Chodkowski

Department: Assistant City Manager

Council Committee Review?: Council Work Session
Date(s) of Committee Review: 04/16/2024

Audio-Visual Needs: None
Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The Execution Of A Real Estate Purchase And Sale Agreement Between The City Of Huber Heights And Homestead Development, LLC.
(first reading)

Purpose and Background

The City of Huber Heights issued a Request For Proposals (RFP) on August 21, 2023 for the sale and purchase of certain real property owned by the City. The property in question is two separate parcels. One parcel is approximately 15 acres in size, the second parcel is approximately 8 acres in size; collectively comprising ~23 acres located at the intersection of Carriage Trails Boulevard and Brandt Pike. Homestead Development, LLC submitted a proposal in response to the City's request to develop the smaller, 8 acre parcel. The proposal includes an initial purchase price of \$1,600,000, the development of market-rate multi-family housing at 20.75 units per acre, and additional minimum service payments currently estimated at \$1,200,000.

A development agreement between the City and Homestead Development, LLC to clarify development terms and incentives relative to approved development plans will be submitted for Council consideration at a future date.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

AUTHORIZING THE EXECUTION OF A REAL ESTATE PURCHASE AND SALE
AGREEMENT BETWEEN THE CITY OF HUBER HEIGHTS AND HOMESTEAD
DEVELOPMENT, LLC.

WHEREAS, the City of Huber Heights (the “City”) issued a Request For Proposals (RFP) on August 21, 2023 for the sale and purchase of certain real property owned by the City; and

WHEREAS, Homestead Development, LLC (the “Developer”) submitted a proposal in response to the City’s request from which the City and Developer wish to enter into a real estate purchase and sales agreement (the “Agreement”); and

WHEREAS the Agreement provides for the development of +/- 8.1 acres of real property owned by the City located near the intersection of Carraige Trails Boulevard and Brandt Pike (State Route 201), having Miami County Parcel Number P48-0004-14 and Miami County Parcel Number P45-250166 herein referred to as the “Property”); and

WHEREAS, the City and Developer desire to enter into the Agreement, attached as Exhibit A, in which the Developer proposes to construct, or cause to be constructed market rate multi-family housing at a density of ~20.75 units per acre (the “Project”) on the Property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The Agreement by and between the City and Developer providing for the purchase and sale of real estate in furtherance of the Project in the form attached as Exhibit A is hereby approved and authorized with changes therein not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the Law Director. The City Manager, for and in the name of this City, is hereby authorized to execute the Agreement, provided further that the approval of changes thereto by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof.

Section 2. The Council further hereby authorizes and directs the City Manager, Director of Finance, Law Director, Clerk of Council, or other such appropriate offices of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Resolution.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the ____ day of _____, 2024;
____ Yeas; ____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A
AGREEMENT TO PURCHASE REAL ESTATE

THIS AGREEMENT TO PURCHASE REAL ESTATE (“Agreement”) is entered into as of the ____ day of _____, 2024 (“Effective Date”) by and between **City of Huber Heights, Ohio**, an Ohio political subdivision, hereinafter referred to as “Seller,” and **Homestead Development LLC**, an Ohio limited liability company, hereinafter referred to as “Purchaser.”

1. **PURCHASE**. Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller on the following terms and conditions, the unimproved real property situated in Miami County, Ohio and located at the southwest corner of the intersection of Carriage Trails Blvd. and State Route 201 containing a total of 8.10 +/- acres, comprised of Miami County Parcel ID P48-0004-14 consisting of approximately 7.94 +/- acres of land and Miami County Parcel ID P45-250166 consisting of approximately .16 +/- acres of land, and which is more particularly described and shown on **Exhibit A** attached hereto and made a part hereof, inclusive of all easements, covenants, rights, privileges and appurtenances thereto, hereinafter referred to as the “Property.”

2. **PURCHASE PRICE**. Purchaser agrees to pay for said Property the sum of One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00) (“Purchase Price”) payable as follows:

Initial Earnest Money	\$10,000.00
-----------------------	-------------

Cash at Closing	\$1,590,000.00
-----------------	----------------

(Subject to credits,
adjustments and prorations as set
forth herein)

Except as expressly set forth herein, all Earnest Money noted herein shall be nonrefundable and provided by Purchaser to Escrow Agent within five (5) business days of the Effective Date or as otherwise directed herein, and held by Chicago Title Insurance Company, Dayton Office, One South Main Street, Suite 250, Dayton, Ohio 45402 (“Escrow Agent”) pursuant to the terms and conditions of this Agreement. The Escrow Agent shall deposit the escrowed funds in a non-interest-bearing account, pursuant to the terms of this Agreement or at the mutual agreement of the parties per a separate escrow agreement, on Escrow Agent’s standard form not inconsistent with the provisions of this Agreement.

The total acreage of the Property shall be determined by Survey as described in this Agreement, or in the absence of a Survey, as set forth in Section 1 hereof.

3. **DEED AND EXCEPTIONS**. Seller shall furnish a limited warranty deed, in a form

acceptable for transfer and recording by public authorities, conveying to Purchaser or nominee, a merchantable and marketable (as determined with reference to the Ohio State Bar Association Standards of Title Examination), fee simple title to the Property, subject to legal highways, free and clear of all liens, rights to take liens, and encumbrances whatsoever, except: (a) all restrictions of record and any agreements, reservations and easements of record that are not objected to by Purchaser pursuant to Section 10 or are objected to by Purchaser but Purchaser subsequently waives such objection pursuant Section 10, (b) any Permitted Exceptions as defined in Section 10 herein, and (c) such taxes and assessments as Purchaser is to pay as provided for herein.

4. TAXES AND ASSESSMENTS. Seller shall pay all taxes and annual assessments, both general and special, that are due and payable at Closing. Purchaser shall pay all such taxes and assessments becoming due and payable thereafter. Taxes and assessments for the year of Closing that are a lien but not yet due and payable at Closing shall be prorated using the method as further described herein. The Seller's warranty that all taxes and assessments have been paid shall not include such prorated installment. In prorating, Seller shall pay 1/365th of the total taxes shown on the two (2) most recent semi-annual tax statements multiplied by the number of days from the statutory due date of the last semi-annual installment to and including the date of delivery of deed. Any assessment due and payable shall be prorated on an annual basis. Seller shall pay its prorated share of the taxes and assessments in cash to the Purchaser, or deduct the same from the Purchase Price at the time of closing.

5. UTILITIES AND POSSESSION. Water and utility bills and any current operating expenses, if any, shall be prorated as of the date of Closing. Exclusive possession and occupancy is to be given to Purchaser on the date of final Closing and delivery of deed.

6. DAMAGE. If any buildings or improvements are materially damaged or destroyed, or the condition of the Property is materially and detrimentally altered (except if any of the foregoing is a result of Purchaser or its agents negligent or willful acts or omissions) prior to Closing, Purchaser shall have the option to terminate this Agreement.

7. CONDITION OF PREMISES. All personal property of the Seller shall be removed from the Property prior to the Closing. In the event that Seller's personal property remains, the Purchaser shall have the right to remove said personal property with reasonable care at Seller's expense. The Property is being sold in its then current, "As Is", "Where Is" and "With All Faults, Condition", subject to the warranties and representations specifically stated herein and in the documents executed and delivered by Seller at Closing, and excluding any implied warranty including without limitation as to the habitability and fitness for a particular for use.

8. APPLICATION OF EARNEST MONEY. The Earnest Money shall be held to apply on the Purchase Price, or to be refunded to the Purchaser only (a) if this offer is not accepted; (b) in the event of a breach of this Agreement by Seller that is not as a result of the breach of this Agreement by Purchaser, in which event Purchaser may, in addition to receiving a return of the Earnest Money, either (i) terminate this Agreement, in which event the parties shall have no further obligations to each other, except as expressly set forth in this Agreement, or (ii) pursue any other

remedy in law or equity, including specific performance. If Purchaser breaches this Agreement, the Earnest Money shall be paid to Seller, in which event Seller may, in addition to receiving the Earnest Money, pursue any other remedy in law or equity.

9. CONTINGENCIES. This Agreement is contingent upon the Purchaser's ability to obtain by the date that is ninety (90) days after first (1st) day of the month following the Effective Date ("Satisfaction Date") the completion of the following contingencies to Purchaser's satisfaction, in Purchaser's sole discretion. In the event that the following contingencies are not satisfied by the Satisfaction Date as determined by Purchaser in its sole discretion, Purchaser shall, prior to the expiration of the Satisfaction Date, give Seller written notice (the "Contingency Notice") that such contingencies have not been satisfied and shall either (i) waive any unsatisfied contingencies and proceed with the Closing, or (ii) notify Seller that Purchaser is terminating the Agreement and will not complete the purchase, in which case the Earnest Money shall be paid to Seller and neither party shall have any further liability hereunder except for those obligations that expressly survive the termination of the Agreement. Purchaser's failure to deliver the Contingency Notice prior to expiration of the Satisfaction Date shall be deemed a waiver by Purchaser of the contingencies in this Section 9. The contingencies are as follows:

(a) Zoning and Governmental Approval. Purchaser confirming that the Property is zoned and approved for Purchaser's intended use as multi-family residential, which shall include, without limitation, Purchaser obtaining all final, non-appealable variances, permits, agreements, licenses, entitlements, consents and approvals (including, without limitation, any subdivision, rezoning, site approval, final development plan approval, or otherwise) which are required in Purchaser's reasonable judgment for development and use of the Property as multi-family residential ("Approvals"). Purchaser, at Purchaser's expense, may file applications to have the Property rezoned, as necessary, and all such other applications as may be required or desired in Purchaser's reasonable judgment to obtain the Approvals. Applications shall be in the name of either Seller or Purchaser as may be required under the applicable governmental provisions. Any such applications shall be processed by City of Huber Heights in the ordinary course, without the requirement of special meetings. In the event Purchaser terminates this Agreement as provided for herein, with applications for Approvals pending, Purchaser shall immediately withdraw such applications from consideration, which obligation shall survive the termination of this Agreement.

(b) Inspections. This Agreement is contingent upon Purchaser's inspection and approval of the Property including its suitability for Purchaser's intended use as multi-family. Such inspections shall include, but not be limited to environmental reports, reasonable determination by Purchaser of satisfactory access of the Property to public utilities, and that no hazardous waste is found on the Property, which inspections shall be at Purchaser's expense. The Purchaser shall conduct its inspections of the Property prior to the Satisfaction Date. By this Agreement, Purchaser is granted permission to enter upon the Property to conduct its inspections, which may include bringing equipment onto the Property for purposes of conducting tests and inspections. Purchaser shall conduct its tests and inspections so as to cause the minimum amount of damage to the Property and shall restore the Property to the extent of any damage thereto at its cost, which obligation shall survive termination of this Agreement. Purchaser shall indemnify and

hold harmless Seller, its officers, employees, elected officials, successors and assigns against any liability for property damage or personal injury resulting from Purchaser's entry upon the Property (excluding, however, the mere discovery of any existing defect or condition not exacerbated by Purchaser), which obligation shall survive the termination of this Agreement or the Closing and not merge with the deed. Purchaser acknowledges and agrees that all reasonable and prudent inspections will be performed prior to Closing.

Prior to any inspections taking place, Purchaser shall obtain and maintain, or at Purchaser's election cause its contractors and consultants to obtain and maintain, a policy of comprehensive general liability insurance with a contractual liability endorsement that covers Purchaser's indemnity obligations set forth above. Such insurance shall be in the amount of at least \$1,000,000 single limit for bodily injury and property damage. Such policy shall be in a form and with an insurance carrier reasonably acceptable to Seller and shall name Seller as an additional insured, and prior to entry on the Property provide Seller a certificate(s) of insurance described herein and a signed copy of the additional insured endorsement to said policy.

(c) Extension of Satisfaction Date. Purchaser shall have the right to extend the Satisfaction Date for a total period not to exceed two hundred seventy (270) days based on the following terms and conditions:

1. Purchaser may extend the Satisfaction Date from ninety (90) days to one hundred fifty (150) days by (i) delivering written notice of such extension to Seller on or before the end of the then-current Satisfaction Date, and (ii) within three (3) business days of delivering such notice, depositing additional Earnest Money in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) with the Escrow Agent, which additional Earnest Money shall be non-refundable (except as expressly set forth herein) but applicable to the Purchase Price;
2. Purchaser may extend the Satisfaction Date from one hundred fifty (150) days to one hundred eighty (180) days by (i) delivering written notice of such extension to Seller on or before the end of the then-current Satisfaction Date, and (ii) within three (3) business days of delivering such notice, depositing additional Earnest Money in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) with the Escrow Agent, which additional Earnest Money shall be non-refundable (except as expressly set forth herein) but applicable to the Purchase Price;
3. Purchaser may extend the Satisfaction Date from one hundred eighty (180) days to two hundred seventy (270) days by (i) delivering written notice of such extension to Seller on or before the end of the then-current Satisfaction Date, and (ii) within three (3) business days of delivering such notice, depositing additional Earnest Money in the amount of Twenty Thousand and 00/100 Dollars (\$20,000.00) with the Escrow Agent, which additional

Earnest Money shall be non-refundable (except as expressly set forth herein) but applicable to the Purchase Price.

(d) Seller Deliveries. Within five (5) business days of the Effective Date, Seller shall deliver to Purchaser copies of all leases, service agreements, signage agreements (including with respect to the advertisement signs currently located on the Property), permits, warranties, operating statements, real estate tax and assessment information, maintenance and repairs information, capital improvements information, development reports, financial reports, feasibility reports, title information, surveys, environmental reports and assessments, wetlands reports, structural reports, engineering studies, mechanical reports, soils reports, geological reports and/or other reports in the Seller's possession or control relating to the Property ("Seller Documents"). Purchaser shall treat such materials as confidential and shall not, except as required by law, disclose the same to anyone other than Purchaser's advisors, attorneys, and consultants on a need-to-know basis in connection with this transaction and/or the Purchaser's intended use of the Property, who themselves shall treat the same as confidential. Notwithstanding any provision of this Agreement to the contrary, the foregoing confidentiality agreement shall survive any termination of this Agreement for a period of two (2) years. Upon termination of this Agreement, Purchaser shall promptly return the Seller Documents to Seller and all copies of same. Seller shall not provide to Purchaser any Seller Documents that Seller has actual knowledge contain false or inaccurate content; however, Seller shall have no obligation to perform any independent investigation regarding the content of the Seller Documents. Except as set forth in this Section 9, Seller is providing Seller Documents to Purchaser without representation or warranty to Purchaser as to the accuracy, completeness, or verification of the content therein and Purchaser shall rely on Seller Documents at its own risk. Purchaser acknowledges that Seller Documents will be made available to Purchaser solely to assist Purchaser in determining the feasibility of purchasing the Property and Purchaser shall not use the Seller Documents for any other purpose. In permitting Purchaser to review the Seller Documents or any other information, Seller has not waived any privilege or claim of confidentiality with respect thereto, and no third-party benefits or relationships of any kind, either express or implied, have been offered, intended or created. Purchaser hereby acknowledges and agrees that (i) Seller may not have prepared any of the Seller Documents; and (ii) Seller is not hereby making any representation or warranty, express or implied, written or oral, as to the condition of the Property or with respect to the accuracy or completeness of the Seller Documents other than that Seller does not have actual knowledge that any Seller Documents contain false or inaccurate content; and (iii) Seller shall not have any liability to Purchaser, its officers, directors, shareholders, employees, agents or contractors or any other person resulting from use of the Seller Documents by Purchaser or any other person. Notwithstanding the foregoing, Seller represents and warrants that, to the best of Seller's knowledge, any Seller Documents that were prepared or created in connection with official city functions, such as but not limited to zoning ordinances or other ordinances, are true, accurate and complete in all material respects. The term "Seller's actual knowledge" or "Seller's knowledge" shall mean the actual knowledge of Richard Dzik, City Manager of Seller, without the duty to investigate and excluding constructive notice.

10. EVIDENCE OF TITLE. Seller shall, at Seller's expense, obtain from Chicago Title Insurance Company, Dayton Office (Escrow Agent) within ten (10) days after the Effective Date, a commitment for an ALTA form owner's fee simple title insurance policy (the "Commitment"). The Commitment shall be in such title company's usual and customary form in the amount of the Purchase Price. Purchaser shall notify Seller in writing not later than ten (10) days after receipt of the Commitment and the Survey (as defined in Section 11), if any, of any defect or other matter of

record and/or any matter identified or disclosed on the Survey not acceptable to Purchaser (each an “Objection” and collectively the “Objections”). All other exceptions or other matters which are acceptable to Purchaser are hereinafter referred to as “Permitted Exceptions”. If Purchaser fails to notify Seller of any Objections in writing within ten (10) days as provided for herein, Purchaser waives its objection and any defects or other matters shall be Permitted Exceptions. Seller shall have the option of (i) remedying or removing the Objections prior to Closing to Purchaser's reasonable satisfaction; (ii) leaving an Objection as is but insuring against it to Purchaser's reasonable satisfaction, or, if the Objection is a monetary lien, depositing sufficient funds in escrow with Escrow Agent to insure over the monetary lien; or (iii) leaving the Objection as is. Within ten (10) days from the receipt of Purchaser's notice of Objections, Seller shall give Purchaser written notice of its election of the foregoing options. If Seller cannot or does not remove the same or obtain an affirmative assurance to insure against any Objection by the Closing, Purchaser shall then have the right, at its option (a) to terminate this Agreement by giving Seller written notice to that effect, whereupon the Earnest Money shall be returned to Purchaser if the uncured Objection makes title unmarketable, subject to Section 3 of this Agreement, or prohibits or materially and adversely impacts Purchaser's ability to develop the Property for multifamily housing as contemplated in Section 21(d) hereof, otherwise the Earnest Money shall be released to Seller, and each party shall be released from all further obligations and liability hereunder except those which expressly survive the termination of this Agreement, or (b) to proceed with this purchase, in which event Purchaser shall waive such Objection and pay the total Purchase Price. Notwithstanding anything to the contrary contained herein, in no event shall any monetary lien or monetary encumbrance of an ascertainable amount affecting the Property be deemed a Permitted Exception (regardless of whether or not Purchaser objected to such liens in its notice of Objections) and the Seller shall be required to remove and/or satisfy all monetary liens or encumbrances affecting the Property prior to or at Closing so that the same do not appear on the final Owners Policy.

11. SURVEY. Purchaser may obtain, at Purchaser's cost, prior to the Satisfaction Date, a survey of the Property certified by a registered surveyor to Purchaser, Purchaser's Lender, if any, and to the title company, and a legal description of the Property prepared in accordance with such survey, collectively the “Survey”. Such survey shall show matters which an accurate survey and inspection of the Property would disclose, as requested by Purchaser in its sole discretion.

12. WARRANTIES AND REPRESENTATIONS.

(a) Seller warrants to Purchaser that, to the best of its knowledge and without independent investigation, subject to any further (without limitation of the foregoing) qualifications set forth below, the following statements are true and correct as of the Effective Date and will be true and correct on the date of Closing. To the extent that between the date hereof and the Closing Seller learns of facts which render such statements untrue, it shall disclose the same to Purchaser, and Purchaser shall have the option to waive the conditions disclosed by such facts and proceed to close the sale, or terminate the Agreement.

Seller warrants and represents that:

1. Seller has good and marketable fee simple title to the Property.
2. Seller has not received any written notice that the Property, or the present condition, operation or use thereof, violates any applicable laws, rules, regulations, restrictions, covenants, agreements, site plan approvals, zoning or subdivision regulations or any duly issued variances, and, to Seller's knowledge, no such violations exist.
3. All assessments now a lien are shown on the taxing authority's records and no improvements (Property or surrounding area) have been installed, the cost of which is to be assessed against the Property in the future.
4. Seller has not been notified of possible future improvements by any public authority, any part of the cost of which would or might be assessed against the Property, or of any contemplated future assessments or any kind which have not been disclosed in writing to Purchaser.
5. Seller has not received notice of any condemnation proceedings pending or contemplated which would affect the Property.
6. Seller, to the best of its knowledge, without independent investigation, represents that the Property and subject to the Seller Documents has never been used as a landfill, disposal site, or location for the generation or storage of any hazardous waste as that term is defined by the Resource Conservation and Recovery Act of 1976, and/or the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986, state and local statutes and ordinances governing hazardous wastes, or by regulations promulgated by any Federal, state or local agency pursuant to said Acts, statutes or ordinances, or any other federal, state, or local statute, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter in effect; nor has said Property been used as a landfill, disposal site, or location for the generation of any hazardous substance or environmental pollutant or contaminant; nor has said Property been used for the operation of any business that has been manufactured or used such hazardous materials; nor does the Property contain any hazardous substance. Seller has not caused or permitted, and subject to the Seller Documents has no knowledge of, the release of any toxic or hazardous waste, material or substance on or off site of the Property, and Seller has not received any notice from any governmental authority or other agency concerning the removal of any toxic or hazardous waste, material or substance from the Property.

7. Subject to the Seller Documents, Seller has no actual knowledge of the existence of any “wetlands” as defined under Section 404 of the Clean Water Act 33 U.S.C. 1344 and Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403 relating to the Property.
8. Subject to the Seller Documents, Seller has no actual knowledge of any underground storage tanks, as defined in 42 U.S.C. 6991, 9001 of the Resource Conservation and Recovery Act (RCRA), located in or about the Property.
9. There are no litigation or administrative proceedings pending, or to Seller’s actual knowledge, threatened against the Property or Seller with respect to the Property.
10. No tenant or other third party has a right of first refusal or an option to purchase the Property.
11. There are no leases or tenancies affecting the Property that will not be terminated at or prior to Closing.
12. This Agreement has, by proper action, been duly authorized, executed and delivered by Seller and all steps necessary to be taken by Seller have been taken to constitute this Agreement, and its covenants and agreements contemplated herein, as its valid and binding obligations, enforceable in accordance with their terms.

(b) Purchaser warrants to Seller that the following statements are true and correct as of the Effective Date and will be true and correct on the date of Closing. To the extent that between the date hereof and the Closing Purchaser learns of facts which render such statements untrue, it shall disclose the same to Seller, and Seller shall have the option to waive the conditions disclosed by such facts and proceed to close the sale, or terminate the Agreement.

The Purchaser, warrants, represents and covenants to Seller that:

1. Purchaser is a duly organized and validly existing limited liability company, in good standing under the laws of the State of Ohio, that has the full right, power and authority to purchase the Property and to carry out Purchaser's obligations hereunder. All requisite actions necessary to authorize Purchaser to enter into this Agreement and to perform its obligations hereunder have been taken. The person executing this Agreement is duly authorized to do so by Purchaser.
2. Purchaser has not violated any contract, agreement or other instrument to which Purchaser is a party nor any judicial order, judgment or decree to which Purchaser is bound by: (x) entering into this Agreement; (y)

executing any of the documents Purchaser is obligated to execute and deliver at the Closing; or (z) performing any of its duties or obligations under this Agreement or otherwise necessary to consummate the transactions contemplated by this Agreement.

3. To Purchaser's knowledge, there are no actions, lawsuits, litigation or proceedings pending or threatened in any court or before any governmental or regulatory agency that affect Purchaser's power or authority to enter into or perform this Agreement.
4. Purchaser shall, subject to obtaining the necessary Approvals, develop the property for multi-family residential purposes based upon the concept plan attached hereto as **Exhibit B**.

13. RESERVED.

14. CLOSING. The Closing of the transaction contemplated in this Agreement, including the delivery of deed and payment of the balance of the Purchase Price ("Closing"), shall be the date that is twenty (20) days after the Satisfaction Date, inclusive of any extensions thereto. The Closing shall occur at the office of Escrow Agent.

Seller shall bear the following fees and expenses incurred in connection with the Closing: (i) preparation of the deed; (ii) recording fees to discharge obligations affecting the Property required to be discharged by Seller under this Agreement; (iii) any conveyance fees, documentary stamps or transfer taxes, (iv) the cost of the title search and issuance of the Commitment; (v) the full premium of a standard ALTA 2006 (or equivalent) owner's title insurance policy ("Owner's Policy") up to the amount of the Purchase Price and any endorsements required to cure any Objection Seller has agreed to cure hereunder; and (vi) one-half (1/2) of the escrow fee due to Escrow Agent.

Purchaser shall bear the following fees and expenses incurred in connection with the Closing: (i) the cost of all endorsements to the Owner's Policy requested by Purchaser and any costs for so-called "extended coverage;" (ii) all costs of Purchaser's due diligence; (iii) the cost of recording the deed, any mortgage granted by Purchaser and issuance of the lender's policy of title insurance and all endorsements thereto; (iv) one-half (1/2) of the escrow fee; and (v) the cost of the Survey, if any.

At or prior to the Closing, the parties shall deliver the following respective items to the Escrow Agent:

- (a) Seller shall deliver to Purchaser a recordable limited warranty deed as described above.
- (b) Seller shall deliver to Purchaser an affidavit, in form satisfactory to

Purchaser, stating that Seller is not a foreign person under Internal Revenue Code Section 1445;

(c) Seller shall deliver its executed counterpart of the Development Agreement (as defined in Section 21(d) below);

(d) Seller shall furnish the title company with a customary owner's affidavit as to mechanic's and materialmen's liens, tax liens, and persons in possession of the Property required by the title company as a condition to its agreement to delete the printed General Exceptions related to such liens and possession from the Commitment;

(e) Seller shall deliver to the title company a settlement statement in accordance with this Agreement; and

(f) Seller shall deliver to the title company such other and further documentation of conveyance and transfer as Purchaser may reasonably request for the purpose of assigning, transferring, granting, conveying, and confirming the sale of the Property to Purchaser.

(g) Purchaser shall pay the balance of the Purchase Price as provided in Section 2 above in cash or certified bank funds;

(h) Purchaser shall deliver its executed counterpart of the Development Agreement;

(h) Purchaser shall delivery to the title company a settlement statement in accordance with this Agreement; and

(i) Purchaser shall delivery to the title company such other and further documentation of conveyance and transfer as Seller may reasonably request for the purpose of assigning, accepting, acquiring, conveying, and confirming the sale of the Property to Purchaser.

15. REAL ESTATE COMMISSION. The parties hereby warrant to the other that no real estate agents have been hired or consulted for this Property.

16. EMINENT DOMAIN. If prior to Closing all or any part of the Property is taken by eminent domain, Purchaser shall have the option to (a) receive the proceeds of such taking up to the full amount of the Purchase Price and close this purchase; (b) reduce the Purchase Price by the amount of the proceeds paid to Seller, up to the full amount of the Purchase Price; or, (c) terminate this Agreement, in which event the parties shall be released from any further obligations hereunder, except those which expressly survive the termination of this Agreement, and the Earnest Money shall be returned to Purchaser.

17. NOTICES. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States mail, certified and with proper postage prepaid and return receipt

requested, or sent via overnight courier (e.g. FedEx) for next day delivery, or sent by electronic mail (in conjunction with overnight courier service for next day delivery), addressed as follows:

(a) If to the Purchaser: Homestead Development LLC
Attn: Doug Falor, VP of Acquisitions
369 E. Livingston Ave.
Columbus, OH 43215
Email: dfalor@homesteadcos.com

With a copy to: Kephart Fisher LLC
Attn: Robert S. Ryan
207 N. Fourth Street
Columbus, Ohio 43215
Email: robryan@kephartfisher.com

(b) If to the Seller: City of Huber Heights
Attn: City Manager
6131 Taylorsville Road
Huber Heights, Ohio 45424
Email: rdzik@hhoh.org

With a copy to: Pickrel, Schaeffer and Ebeling Co., LPA
Attn: David H. Montgomery, City Law Director
40 N. Main Street, Suite 2700
Dayton, Ohio 45423
Email: dmontgomery@pselaw.com

or to such other address for either of the parties hereto as may from time to time be designated by notice given by such party to the other party in the manner hereinabove provided.

18. ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties. All rights hereunder may be assigned by either party only upon prior written approval by the other party, such approval not to be unreasonably delayed or withheld. Notwithstanding the foregoing, Purchaser may assign its rights and obligations under this Agreement to an entity that is, directly or indirectly, controlling, controlled by or under common control with Purchaser, provided that (a) Purchaser delivers written notice of such proposed assignment to Seller prior to Closing, (b) at or prior to Closing, Purchaser and such entity execute and deliver to Seller a document by which Purchaser assigns, and such new entity assumes, all of the duties and obligations of Purchaser under this Agreement, and (c) said assignment has a reservation on granting that the assignor shall remain liable for the indemnity and other Purchaser obligations hereunder. Failure for any permitted assignment to include the continuing obligations by assignor shall automatically be deemed a default hereunder and a defective assignment without force and effect.

19. BINDING EFFECT AND EXCLUSIVE TERMS. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties. This instrument is the entire agreement between the parties, which may be executed in multiple counterparts with the same effect as if all parties executed the same document, and is to take effect as a sealed instrument the date the last party signs said instrument. The captions and marginal notes are intended only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it. Neither party shall be bound by any terms, conditions, statements, or representations, oral or written, not herein contained. In the event either party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing party in such action, after the final determination of any appeals, as applicable, shall have the right to recover reasonable attorney's fees and costs from the other party, to be fixed by the court in the same action. Where applicable, the language in this Agreement may be construed in the singular or plural number and in the masculine, feminine, or neuter gender.

20. TIME IS OF THE ESSENCE. The parties further agree that in each Section of this Agreement wherein a time limitation is placed upon a specific act or performance, then time shall be of the essence in reference to each and every act or performance; provided that any time period provided for herein which shall end on a Saturday, Sunday, or legal holiday shall extend to the next business day. Any reference to a period of time shall mean calendar days, unless expressly stated. Business days shall mean Monday through Friday excepting legal holidays.

21. CONDITION PRECEDENT TO CLOSING. The following are condition precedents to Closing:

- (a) Approval of this Agreement by the City Council of Huber Heights, Ohio and the execution of the same, no more than one (1) business day after City Council's approval; and
- (b) Purchaser's written affirmation to Seller at least two (2) days prior to Closing of its commitment to construct the multifamily housing on the general terms set forth in Section 21(d) hereof;
- (c) The parties shall have delivered to each other or the title company, as the case may be, all fully executed documents, in recordable form where applicable, and all settlement funds as required pursuant to this Agreement; and
- (d) The parties shall have negotiated the final form of a Development Agreement (the "Development Agreement") on or before the initial Satisfaction Date, which Development Agreement shall be executed and delivered by the parties at Closing. The Development Agreement shall be based on the following general criteria:
 - (i) Purchaser shall develop the Property in general conformity to the proposed

Concept Plan attached hereto and incorporated herein as **Exhibit B** for a multifamily residential development with a minimum development investment of \$3,518,666 per acre, an estimated improvement value (hard costs) of \$3,111,111 per acre (“Estimated Improvement Value”), based on an approximate density of 20.75 dwelling units per acre, or such other minimum investment amount and density agreed to by the parties, subject to and as modified by any Approvals;

- (ii) Seller and Purchaser agree the Property will be benefitted by and subject to a Community Reinvestment Area (CRA# 5) designation, inclusive of property tax exemptions of 100% of the taxable value of the improvements to the Property for a period of 15 years and minimum service payments or similar payments in lieu of taxes during such 15 year period, with an annual payment of \$80,353.00 calculated by (1) multiplying the Estimated Improvement Value as provided for in Section 21d(i) of this Agreement by 35% , then (2) multiplying such product under clause (1) by the 2023 effective tax rate of 50.612788 applicable to the Property, then (3) dividing the product under clause (2) by 1,000, and then (4) multiplying the quotient under clause (3) by 18% (for an aggregate total over 15 years of \$1,205,293), or such other amounts and terms mutually agreed to by the parties. The property tax exemptions, along with the minimum service payment amounts and schedules, shall be specifically enumerated and set forth in the Development Agreement. The CRA shall be approved by all necessary city approvals and resolutions and be in place by Closing, which shall be a condition of Closing; and
- (iii) Seller will agree to make, at Seller’s expense, certain public right of way improvements consisting of the removal of the entrance and exit ramps depicted in the illustration attached to this Agreement as **Exhibit C** and incorporated herein by reference. Such improvement work will be completed by no later than December 31, 2025. Upon completion of the improvement work, the land area adjacent to the northeast corner of the Property on which the entrance ramp was previously located shall be conveyed to Purchaser at no cost.
- (iv) Purchaser shall, upon request by Seller provide and grant without cost or other compensation, temporary construction easements and permanent easements for the construction and completion of the public right-of-way improvements set forth on **Exhibit C**. The easements described herein shall not materially impact Purchaser’s intended development and use of the Property, shall be on commercially reasonable terms, memorialized via separate instrument and the parties shall proceed in good faith to promptly negotiate and executed the same in recordable form, within thirty (30) days of the request for said easement(s). Seller shall be responsible for cost of recording said easement with County Recorder. The provisions of this paragraph shall survive the Closing and not merge with the deed.

21. NO MATERIAL CHANGES: Unless approved by Purchaser in writing in advance, Seller shall not enter into or permit any new leases, contracts, easements, liens or title encumbrances affecting the Property, or agree to renew/extend or make any material changes in any existing leases, contracts, easements, liens or title encumbrances related to the Property, from the Effective Date through Closing. In the event Seller breaches this provision, Purchaser shall have the right to terminate this Agreement, in which case the Earnest Money shall be promptly returned to Purchaser. The foregoing right to terminate this Agreement and receive a return of the Earnest Money shall not in any way affect or limit any other right or remedy that Purchaser may be entitled to under this Agreement or at law or in equity.

22. GOVERNING LAW: This Contract shall be governed by and construed or enforced in accordance with the laws of the State of Ohio.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year indicated below.

PURCHASER:

HOMESTEAD DEVELOPMENT, LLC

By: _____

Printed Name:

Title:

Date: _____

SELLER:

CITY OF HUBER HEIGHTS, OHIO

By: _____

City Manager

Date: _____

RECEIPT AND AGREEMENT

Receipt is hereby acknowledged by Chicago Title Insurance Company of the sum of Ten Thousand Dollars (\$10,000.00) in Earnest Money to be held subject to the terms of the above Agreement.

CHICAGO TITLE INSURANCE COMPANY

By: _____

Printed Name: _____

Date: _____

Exhibit A – Legal Description

Exhibit B – Purchaser's Concept Plan

Exhibit C – Illustration of Right of Way Work

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

PURCHASER'S CONCEPT PLAN

[See Attached]



Huber Heights - Site 2 // Site Capacity Study
 FEBRUARY 26, 2024
 6340000100000000

SITE // TOTALS **V2.0**

SITE INFO // CURRENT

ACRES	// 8.09 AC
ADDITION	// CITY OF ALBANY HEIGHTS
ZONING	// COMMERCIAL 1 400
HEIGHT	// 3 STORES

SITE INFO // PROPOSED

ACRES	// 8.09 AC
ZONING	// MULTIFAMILY RESIDENTIAL
DENSITY	// 20.75 UNITS / AC

PROPOSED //

BUILD TYPE	// WALK-UP PRODUCT
# BLDGS	// 06
# LEVELS	// 03 (WOODFRAME BREZZERWAY)
BUILD TYPE A	// 06 (224 SF FOOTPRINT)
# BLDGS	// 02
UNITS / BLDG	// 24
BUILD TYPE B	// 10 (220 SF FOOTPRINT)
# BLDGS	// 02
UNITS / BLDG	// 24
BUILD TYPE C	// 12 (092 SF FOOTPRINT)
# BLDGS	// 02
UNITS / BLDG	// 36

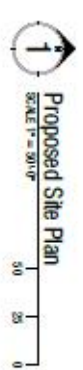
TOTAL UNITS	// 168 UNITS	264 BEDS
	// 072 1 BD	42.8%
	// 096 2 BD	57.2%

PARKING

	// 240 SURFACE SPACES
	// 020 GARAGE SPACES
	2 BLDGS // 1,406 SF EACH
	1 BLDG // 1,999 SF EACH

TOTAL PARKING	// 260 SPACES PROVIDED
	// 262 SPACES REQUIRED
	(15 SPACES / UNIT)

	// 126 SPACES / UNIT
	// 098 SPACES / BED



HOMESTEAD
 COMPANIES
archall

EXHIBIT C

ILLUSTRATION OF RIGHT OF WAY WORK



AI-10014

New Business M.

City Council Meeting

City Manager

Meeting Date: 04/22/2024

Carriage Trails At The Heights, LLC - Purchase/Sales Agreement - State Route 201, LLC Acres

Submitted By: Bryan Chodkowski

Department: Assistant City Manager

Division: Economic Development

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 04/16/2024

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The Execution Of A Real Estate Purchase And Sale Agreement Between The City Of Huber Heights And Carriage Trails At The Heights, LLC.
(first reading)

Purpose and Background

The City of Huber Heights issued a Request For Proposals (RFP) on August 21, 2023 for the sale and purchase of certain real property owned by the City. The property in question is two separate parcels. One parcel is approximately 15 acres in size, the second parcel is approximately 8 acres in size; collectively comprising ~23 acres located at the intersection of Carriage Trails Boulevard and Brandt Pike. Carriage Trails At The Heights, LLC has a proposal to develop the larger, 15 acre parcel. The proposal includes an initial purchase price of \$1,040,000, the development of market-rate multi-family housing, the donation of acreage for the pending traffic signal at Carriage Trails Boulevard/Brandt Pike (State Route 201) intersection, and additional minimum service payments currently estimated at \$1,290,000.

A development agreement between the City and the Developer to clarify development terms and incentives relative to approved development plans will be submitted for Council consideration at a future date.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

AUTHORIZING THE EXECUTION OF A REAL ESTATE PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF HUBER HEIGHTS AND CARRIAGE TRAILS AT THE HEIGHTS, LLC.

WHEREAS, the City of Huber Heights (the “City”) issued a Request For Proposals (RFP) on August 21, 2023 for the sale and purchase of certain real property owned by the City; and

WHEREAS, Carriage Trails At The Heights, LLC (the “Developer”) submitted a proposal in response to the City’s request from which the City and Developer wish to enter into a real estate purchase and sales agreement (the “Agreement”); and

WHEREAS the Agreement provides for the development of Miami County Parcel Number P48 000412 consisting of approximately 14.96 +/- acres of land, herein referred to as the “Property”; and

WHEREAS, the City and Developer desire to enter into the Agreement, attached as Exhibit A, in which the Developer proposes to construct, or cause to be constructed market rate multi-family housing at a density of ~17.81 units per acre (the “Project”) on the Property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The Agreement by and between the City and Developer providing for the purchase and sale of real estate in furtherance of the Project in the form attached as Exhibit A is hereby approved and authorized with changes therein not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the Law Director. The City Manager, for and in the name of this City, is hereby authorized to execute the Agreement, provided further that the approval of changes thereto by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof.

Section 2. The Council further hereby authorizes and directs the City Manager, Director of Finance, Law Director, Clerk of Council, or other such appropriate offices of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Resolution.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the ____ day of _____, 2024;
____ Yeas; ____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A
AGREEMENT TO PURCHASE REAL ESTATE

THIS AGREEMENT ("Agreement") is entered into as of the ____ day of _____, 2024 ("Effective Date") by and between **City of Huber Heights, Ohio**, an Ohio political subdivision, hereinafter referred to as "Seller" and **Carriage Trails at The Heights LLC**, an Ohio limited liability company, or an affiliate, hereinafter referred to as "Purchaser."

1. PURCHASE. Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller on the following terms and conditions, the unimproved real property situated in Miami County, Ohio and located on Carriage Trails Parkway, being Miami County Parcel ID P48-000412 consisting of approximately 14.96 +/- acres of land, and which is more particularly depicted and shown on **Exhibit A** attached hereto and made a part hereof, inclusive of all easements, covenants, rights, privileges and appurtenances thereto hereinafter referred to as the "Property". The Property is being sold in its then current, "As Is", "Where Is" and "With All Faults, Condition", subject to the warranties and representations specifically stated herein and excluding any implied warranty including without limitation as to the habitability and fitness for a particular use.

2. PURCHASE PRICE. Subject to adjustment as provided in the last paragraph, Purchaser agrees to pay for said Property the sum of One Million Forty-Nine Thousand One Hundred Fifty-Nine and 76/100 Dollars (\$1,049,159.76) ("Purchase Price") payable as follows:

Earnest Money	\$ 10,000.00
Cash at Closing	\$1,039,159.76 (Subject to adjustments herein)

All Earnest Money shall be provided by Purchaser to Escrow Agent within five (5) business days of the Effective Date, to Stewart Title Company, 259 West Schrock Road, Westerville, Ohio 43081 ("Escrow Agent" and "Title Company") pursuant to the terms and conditions of this Agreement. The Escrow Agent shall deposit the Earnest Money in a non-interest-bearing account, pursuant to the terms of this Agreement, or at the mutual agreement of the parties per a separate escrow agreement, on Escrow Agent's standard form and not inconsistent with the provisions of this Agreement.

The Purchase Price for the Property shall be calculated by multiplying Seventy Thousand One Hundred Thirty-One and no/100 Dollars (\$70,131.00) times the total acreage of the Property. The total acreage of the Property shall be determined by Survey as described in this Agreement, or in the absence of a Survey, as set forth in Section 1 hereof.

3. DEED AND EXCEPTIONS. Seller shall furnish a limited warranty deed, in a form acceptable for transfer and recording by public authorities, conveying to Purchaser or affiliate, a

merchantable and marketable (as determined with reference to the Ohio State Bar Association Standards of Title Examination), fee simple title to the Property, subject to legal highways, free and clear of all liens, rights to take liens, and encumbrances whatsoever, except: (a) all restrictions of record and any agreements, reservations and easements of record, (b) any Permitted Exceptions as defined in Section 7 herein, and (c) such taxes and assessments as Purchaser is to pay as provided for herein.

4. TAXES AND ASSESSMENTS. Seller shall pay the semi-annual installment of taxes and annual assessments, both general and special, that are due and payable at closing ("Closing"). The Seller's warranty that all taxes and assessments have been paid except for prorated installments that are not due and payable. In prorating, Seller shall pay 1/365th of the total taxes shown on the two (2) most recent semi-annual tax statements multiplied by the number of days from the statutory due date of the last semi-annual installment to and including the date of Closing. The parties shall prorate any real property taxes and assessments through the Closing date; provided however, any assessment due and payable shall be prorated on an annual basis. Seller shall pay its prorated share of the taxes and assessments in cash to the Purchaser, or deduct the same from the Purchase Price at the time of Closing. Seller, to its knowledge, and without independent investigation, acknowledges that no assessments have been made against the Property that are unpaid, whether or not they have become liens.

5. APPLICATION OF EARNEST MONEY. The Earnest Money shall apply to the Purchase Price, and to be refunded to the Purchaser only if this offer is not accepted or if this transaction does not close for any reason provided for herein or breach by Seller and not as a result of the breach of this Agreement by Purchaser, in which event Purchaser may pursue any other legal or equitable remedy in law or equity, including specific performance. If Purchaser breaches this Agreement, the Earnest Money shall be paid to Seller, and Seller may pursue any other legal or equitable remedies permitted by law and equity, including specific performance.

6. CONTINGENCIES. This Agreement is contingent upon the Purchaser's ability to obtain within one hundred twenty (120) days of the Effective Date ("Satisfaction of Contingencies Date") the completion of the following contingencies to Purchaser's reasonable satisfaction. In the event that the following contingencies are not satisfied by the Satisfaction of Contingencies Date, Purchaser shall, prior to the expiration of the Satisfaction of Contingencies Date, give Seller written notice that such contingencies have not been satisfied and shall either (i) waive any unsatisfied contingencies and proceed with the Closing, (ii) mutually agree upon any extensions for the Seller's removal of the conditions; or (iii) notify Seller that Purchaser will not complete the purchase, in which case the Earnest Money shall be returned to Purchaser and neither party shall have any further liability hereunder except for those obligations that expressly survive the termination of the Agreement. The contingencies are as follows:

(a) Zoning. Within thirty (30) days of the Effective Date of the Agreement, Seller will provide written confirmation to Purchaser that the Property is zoned for Purchaser's intended use of multifamily units and as generally identified in the attached Conceptual Site Plan attached hereto as **Exhibit B** ("Intended Use").

(b) Governmental Approval Applications for the zoning for the Intended Use shall be in the name of either Seller or Purchaser as may be required under the applicable governmental provisions. Any such applications shall be processed by the City of Huber Heights in the ordinary course, and in a reasonable time frame, without the requirement of special meetings. In the event Purchaser terminates this Agreement as provided for herein, with applications for approvals ("Approvals") pending, Purchaser shall immediately withdraw such applications from consideration, which obligation shall survive the termination of this Agreement.

(c) Inspections. This Agreement is contingent upon Purchaser's inspection of the Property including its suitability for Purchaser's Intended Use. Such inspections shall include, but not be limited to environmental reports, reasonable determination by Purchaser of satisfactory access of the Property to public utilities, and that no hazardous waste is found on the Property, which inspections shall be at Purchaser's expense. The Purchaser shall conduct its inspections of the Property prior to the Satisfaction of Contingencies Date. If Purchaser reasonably determines, as a result of any of its inspections, that the Property is unsatisfactory to it, Purchaser may terminate this Agreement as provided above, and Seller shall consent to Escrow Agent's refund to Purchaser the full amount of the Earnest Money; provided, however, Purchaser shall not be released of those obligations that expressly survive the termination of this Agreement. By this Agreement, Purchaser is granted permission to enter upon the Property to conduct its inspections, which may include bringing equipment onto the Property for purposes of conducting tests and inspections. Purchaser shall conduct its tests and inspections so as to cause the minimum amount of damage to the Property and shall restore the Property to the extent of any damage thereto at its cost, which obligation shall survive termination of this Agreement. Purchaser shall indemnify and hold harmless Seller, its officers, employees, elected officials and their successors and assigns against any liability for property damage or personal injury resulting from Purchaser's entry upon the Property, which obligation shall survive the termination of this Agreement or the Closing and not merge with the deed. Purchaser acknowledges and agrees that all reasonable and prudent inspections will be performed prior to Closing.

Prior to any inspections taking place, Purchaser shall cause its contractors and consultants performing inspection activities on the Property to obtain and maintain during the pendency of this transaction a policy of comprehensive general liability insurance with a contractual liability endorsement that covers Purchaser's indemnity obligations set forth above. Such insurance shall be in the amount of at least \$1,000,000 single limit for bodily injury and property damage. Such policy shall be in a form and with an insurance carrier reasonably acceptable to Seller. Prior to Purchaser's entry onto the Property, Purchaser shall provide to Seller the name and address of each such contractor and consultant and shall cause each such contractor and consultant to deliver to Seller a certificate of insurance evidencing such insurance, in a form acceptable to Seller, which includes Seller as an additional insured under its liability insurance, together with a signed copy of an additional insured endorsement.

(d) Utility Services. Utility services means and refers to water and sewer services provided by the Seller, including but not limited to, (i) water and sewer service; (ii) service

taps as required from existing water and sewer lines; and (iii) tap permits as necessary. The Seller shall provide to Purchaser a letter of City water and/or sewer availability and water and/or sewer capacity for the Intended Use located from the Carriage Trails Parkway.

(e) Curb Cuts. The parties agree to provide ingress/egress at mutually agreed locations, and right-of-way permits to be used from Carriage Trails Parkway to the Property as needed for the Intended Use.

(f) Development Agreement. The parties shall negotiate a development agreement ("Development Agreement"), written in final form at least 120 days from the Effective Date, unless the parties mutually agree to an extension, based on the following criteria:

- i. Purchaser shall develop the Property in general conformity to the Intended Use, subject to and in conformance with all Approvals, and consistent with development agreements with developers for Carriage Trails and Purchaser's response to Seller's Economic Development Request For Proposal, dated September 13, 2023; and
- ii. Seller and Purchaser agree to subject the property to a Community Reinvestment Area (CRA# #5 Resolution) incentives, which shall provide for minimum service payments, or similar payments in lieu of taxes in the total amount of \$1,298,865 for a period of 15 years, which will be paid in thirty (30) installment or a semi-annual basis on the date real property taxes and assessments are due and payable, on terms and conditions set forth in the Development Agreement.

7. EVIDENCE OF TITLE. Purchaser shall, at Seller's expense, obtain from the Title Company within ten (10) days after the Effective Date, a commitment for an ALTA form owner's fee simple title insurance policy (the "Commitment"). The Commitment shall be in such Title Company's usual and customary form in the amount of the Purchase Price. Purchaser shall notify Seller in writing not later than thirty (30) days after receipt of the Commitment and the Survey, of any defect not acceptable to Purchaser, all exceptions not excepted by Purchaser and which are acceptable to Purchaser are hereinafter referred to as "Permitted Exceptions". If Purchaser fails to notify Seller in writing within thirty (30) days as provided for herein, Purchaser waives its objection and any defects shall be Permitted Exceptions. If Purchaser notifies Seller of exceptions, Seller shall have the option of (i) remedying or removing the unacceptable exceptions prior to Closing to Purchaser's reasonable satisfaction; (ii) leaving the unacceptable exception as is but reasonably insuring against it, or, if the exception is a monetary lien, depositing sufficient funds in escrow with a title insurance company to insure over the monetary lien; or (iii) leaving the unacceptable exception as is. Within twenty-one (21) days from the receipt of Purchaser's objection, Seller shall give Purchaser written notice of its election of the foregoing options. If Seller cannot or does not remove the same or obtain an affirmative assurance by the Title Company to insure against such defect by the Closing, Purchaser shall then have the right, at its option (a) to terminate this Agreement by giving Seller written notice to that effect, whereupon the Earnest

Money shall be returned to Purchaser and each party shall be released from all further obligations and liability hereunder except those which expressly survive the termination of this Agreement, or (b) to proceed with this purchase, in which event Purchaser shall waive such exceptions and pay the total Purchase Price, or if Purchaser elects, such monetary liens may be assumed with a credit issued to Purchaser against the Purchase Price.

8. SURVEY. Purchaser may obtain, at Purchaser's cost, prior to the Satisfaction of Contingencies Date, a survey of the Property certified by a registered surveyor to Purchaser, Purchaser's Lender, if any, and to the title company, and a legal description of the Property prepared in accordance with such survey, collectively the "Survey". Such survey shall show matters which an accurate survey and inspection of the Property would disclose, as requested by Purchaser in its sole discretion.

9. WARRANTIES AND REPRESENTATIONS.

(a) Seller warrants to Purchaser that, the following statements are true and correct as of the Effective Date and will be true and correct on the date of Closing. To the extent that between the date hereof and the Closing Seller learns of facts which render such statements untrue, it shall disclose the same to Purchaser, and Purchaser shall have the option to waive the conditions disclosed by such facts and proceed to close the sale, or terminate the Agreement.

Seller warrants, represents and covenants to Purchaser that:

1. Seller shall have good and marketable fee simple title to the Property.
2. Seller has the full right, power, authority and legal capacity to execute, deliver and perform this Agreement and each instrument, agreement, certificate, schedule or other document attached hereto or cited herein, subject to the exceptions set forth herein. Seller will supply all necessary documents that adequately demonstrates Seller is qualified to convey fee simple, marketable title to the Property.
3. Seller has not received any notice or order from any governmental authority as to a violation of the condition of the Property.
4. All assessments now a lien are shown on the taxing authority's records and no improvements on the Property or surrounding area have been installed, the cost of which is to be assessed against the Property in the future, including, but not limited to, the assessment for the construction of Carriage Trails Parkway (City of Huber Heights Ordinance No. 2004-O-1537).
5. Seller has not been notified of possible future improvements by any public authority, any part of the cost of which would or might be assessed against the Property, or of any contemplated future assessments or any kind which

have not been disclosed in writing to Purchaser.

6. Seller has not received notice of any condemnation proceedings pending or contemplated which would affect the Property.
7. Seller to the best of its actual knowledge, without independent investigation, represents that the Property has never been used as a landfill, disposal site, or location for the generation of any hazardous waste as that term is defined by the Resource Conservation and Recovery Act of 1976, and/or the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or by Superfund Amendments and Reauthorization Act of 1986, or state and local statutes and ordinances governing hazardous wastes, or by regulations promulgated by any Federal, state or local agency pursuant to said Acts, statutes or ordinances, or any other federal, state, or local statute, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter in effect; nor has said Property been used as a landfill, disposal site, or location for the generation of any hazardous substance or environmental pollutant or contaminant; nor has said Property been used for the operation of any business that has been manufactured or used such hazardous materials.
8. Seller to the best of its actual knowledge, without independent investigation, has no knowledge of the existence of any “wetlands” as defined under Section 404 of the Clean Water Act 33 U.S.C. 1344 and Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403 relating to the Property.
9. Seller to the best of its actual knowledge, without independent investigation, has no knowledge of any underground storage tanks, as defined in 42 U.S.C. 6991, 9001 of the Resource Conservation and Recovery Act (RCRA), located in or about the Property.
10. There is no action, suit or proceeding which is pending and which Seller has received written notice, against Seller before any court, administrative agency or other governmental authority which relates to the Property or to Seller’s use of the Property, including no proceeding, whether voluntary or otherwise, which is pending against Seller under the bankruptcy or insolvency laws of the United States or any state thereof. To Seller’s actual knowledge, and without independent investigation, there is no action, suit, proceeding, investigation or claim by any governmental authority that has been threatened against Seller and that relates to the Property or Seller’s use of the Property.

(b) Purchaser warrants to Seller that the following statements are true and correct as of the Effective Date and will be true and correct on the date of Closing. To the extent that between the date hereof and the Closing Purchaser learns of facts which render such statements untrue, it shall disclose the same to Seller, and Seller shall have the option to waive the conditions disclosed by such facts and proceed to close the sale or terminate the Agreement.

Purchaser, warrants, represents and covenants to Seller that:

1. Purchaser has been duly organized and is in good standing and has the full right, power, authority and legal capacity to execute, deliver and perform this Agreement and each instrument, agreement, certificate, schedule or other document attached hereto or cited herein, subject to the exceptions set forth herein.
2. To the extent that Purchaser assigns this Agreement to an affiliate, such affiliate shall be a duly organized and validly existing limited liability company, in good standing under the laws of the State of Ohio, that will have the full right, power and authority to purchase the Property and to carry out Purchaser's obligations hereunder. All requisite actions necessary to authorize Purchaser to enter into this Agreement and to perform its obligations hereunder have been taken. The person executing this Agreement is duly authorized to do so by Purchaser.
3. Purchaser has not violated any contract, agreement or other instrument to which Purchaser is a party nor any judicial order, judgment or decree to which Purchaser is bound by: (x) entering into this Agreement; (y) executing any of the documents Purchaser is obligated to execute and deliver at the Closing; or (z) performing any of its duties or obligations under this Agreement or otherwise necessary to consummate the transactions contemplated by this Agreement.
4. There is no action, suit or proceeding which is pending against Purchaser before any court, administrative agency or other governmental authority which would prevent Purchaser's acquisition of the Property, including no proceeding, whether voluntary or otherwise, which is pending against Purchaser under the bankruptcy or insolvency laws of the United States or any state thereof. To Purchaser's knowledge, there is no action, suit, proceeding, investigation or claim by any governmental authority which has been threatened against Purchaser and which would prevent Purchaser's acquisition of the Property.
5. Purchaser shall, subject to obtaining the necessary Approvals, develop the Property for multi-family residential purposes for the Intended Use and proceed in good faith and in a diligent manner to satisfy the conditions set

forth in this Agreement. This provision shall survive Closing.

10. INDEMNITY. Purchaser agrees to defend, indemnify and hold harmless Seller from any and all valid claims and causes of action including reasonable costs, expenses and attorney fees suffered by Seller as a result of a breach of Purchaser's warranties. The terms and conditions of this section shall survive the Closing for a period of one (1) year.

Seller agrees to defend, indemnify and hold harmless Purchaser from any and all valid claims and causes of action including reasonable costs, expenses and attorney fees suffered by Purchaser as a result of a breach of Seller's warranties. The terms and conditions of this section shall survive the Closing for a period of one (1) year.

11. CLOSING. The Closing date for delivery of deed and payment of the balance of the Purchase Price shall be on or before twenty (20) days after the Satisfaction of Contingencies Date. Place and date of Closing shall be designated by Seller, but shall be within Miami County, Ohio. In the absence of any designation for location of Closing, the same shall occur at the office of Escrow Agent.

Seller shall pay the following fees and expenses incurred in connection with the Closing: (i) preparation of the deed, (ii) recording fees to discharge obligations affecting the Property required to be discharged by Seller under this Agreement, (iii) any conveyance fees, documentary stamps or transfer taxes, (iv) the cost of the title search and issuance of the Commitment; and (v) one-half (1/2) of the escrow fee due to Escrow Agent.

Purchaser shall pay the following fees and expenses incurred in connection with the Closing: (i) the cost of all endorsements to the owner's title insurance policy ("Owner's Policy"); (ii) all costs of Purchaser's due diligence; (iii) the full premium of the Owner's Policy up to the amount of the Purchase Price and any endorsements thereto; (iv) the cost of recording the deed, any mortgage granted by Purchaser and issuance of the lender's policy of title insurance and endorsements thereto; (v) one-half (1/2) of the escrow fee; and (vi) the cost of the Survey, if any.

At or prior to the Closing, the parties shall deliver the following respective items to the Escrow Agent:

- (a) Seller shall deliver to Purchaser a recordable limited warranty deed as described above.
- (b) Seller shall deliver to Purchaser an affidavit, in form satisfactory to Purchaser, stating that Seller is not a foreign person under Internal Revenue Code Section 1445.
- (c) Seller shall furnish the title company with a customary owner's affidavit as to mechanic's and materialmen's liens, tax liens, and persons in possession of the Property required by the title company as a condition to its agreement to delete the

printed "general exceptions" related to such liens and possession from the Commitment.

(d) Seller shall deliver to the title company a settlement statement in accordance with this Agreement; and

(e) Seller shall deliver to the title company such other and further documentation of conveyance and transfer as Purchaser may reasonably request for the purpose of assigning, transferring, granting, conveying, and confirming the sale of the Property to Purchaser.

(f) Purchaser shall pay the balance of the Purchase Price as provided in Section 2 above in cash or certified bank funds.

(g) Purchaser shall deliver to the title company a settlement statement in accordance with this Agreement; and

(h) Purchaser shall deliver to the title company such other and further documentation of conveyance and transfer as Seller may reasonably request for the purpose of assigning, accepting, acquiring, conveying, and confirming the sale of the Property to Purchaser.

12. REAL ESTATE COMMISSION. The parties hereby warrant to the other that no real estate agents have been hired or consulted for this Property.

13. EMINENT DOMAIN. If prior to Closing all or any part of the Property is taken by eminent domain, Purchaser shall have the option to (a) receive the proceeds of such taking up to the full amount of the Purchase Price and close this purchase; (b) reduce the Purchase Price by the amount of the proceeds paid to Seller, up to the full amount of the Purchase Price; or, (c) terminate this Agreement, in which event the parties shall be released from any further obligations hereunder, except those which expressly survive the termination of this Agreement, and the Earnest Money shall be returned to Purchaser.

14. NOTICES. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States mail, certified and with proper postage prepaid and return receipt requested, when the return receipt is signed or refused, sent via overnight courier (e.g. FedEx) for next day delivery, or sent by email with confirmation of receipt and in conjunction with concurrent, or next day, service being provided per other method as set forth herein addressed as follows:

(a) If to the Purchaser: Carriage Trails at The Heights LLC
Attn: William W. Keethler II, CEO & President
5131 Post Road, Suite 101
Dublin, Ohio 43017
Email: bkeethler@carriage-trails.com

With a copy to: Kidder Law Firm, LLC
Attn: Charles L. Kidder, Esq.
5131 Post Road, Suite 101
Dublin, Ohio 43017
Email: ckidder@kidderlegal.com

(b) If to the Seller: City of Huber Heights
Attn: City Manager
6131 Taylorsville Road
Huber Heights, Ohio 45424
Email: rdzik@hhoh.org

With a copy to: Pickrel, Schaeffer and Ebeling Co., LPA
Attn: David H. Montgomery, City Law Director
40 N. Main Street, Suite 2700
Dayton, Ohio 45423
Email: dmontgomery@pselaw.com

or to such other address for either of the parties hereto as may from time to time be designated by notice given by such party to the other party in the manner hereinabove provided.

15. ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties, and their respective successors and assigns. All rights hereunder may be assigned by either party only upon prior written approval by the other party, such approval not to be unreasonably delayed or withheld.

16. BINDING EFFECT AND EXCLUSIVE TERMS. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties. This instrument is the entire agreement between the parties, which may be executed in multiple counterparts with the same effect as if all parties executed the same document and is to take effect as a sealed instrument the date the last party signs said instrument. The captions and marginal notes are intended only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it. Neither party shall be bound by any terms, conditions, statements, or representations, oral or written, not herein contained. In the event either party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing party in such action, after the final determination of any appeals, as applicable, shall have the right to recover reasonable attorney's fees and costs from the other party, to be fixed by the court in the same action. Where applicable, the language in this Agreement may be construed in the singular or plural number and in the masculine, feminine, or neuter gender.

17. TIME IS OF THE ESSENCE. The parties further agree that in each Section of this Agreement wherein a time limitation is placed upon a specific act or performance, then time shall be of the essence in reference to each and every act or performance; provided that any time period

provided for herein which shall end on a Saturday, Sunday, or legal holiday shall extend to 5:00 p.m., of the next business day. Any reference to a period of time shall mean calendar days, unless expressly stated. Business days shall mean Monday through Friday excepting legal holidays.

18. **CONDITIONS PRECEDENT TO CLOSING.** The following are conditions precedent to Closing:

- 1) Approval of this Agreement by the City council on or before April 22, 2024 and the execution of the same, no more than one (1) business day after City Council's approval; and
- 2) Purchaser's written affirmation to Seller prior to Closing of its commitment to construct the multifamily housing based on the Intended Use; and
- 3) Parties' negotiation of the Development Agreement referenced in Section 6(f) hereof; and
- 4) The parties shall have delivered to each other or the Title Company, as the case may be, all fully executed documents, in recordable form where applicable, and all settlement funds.

19. **RIGHT OF FIRST OPTION.** Purchaser was the second lowest bidder on the +/- 7.94 acres identified on **Exhibit B as Parcel B** attached hereto. If Homestead Companies does not purchase the +/- 7.94 acres, the Seller agrees to sell the +/- 7.94 acres to Purchaser on the terms and conditions proposed by Purchaser in the response to Seller's City of Huber Heights Department of Economic Development Request for Proposals, dated September 13, 2023.

20. **TRANSFER OF PURCHASER'S PROPERTY.** Purchaser currently owns 2.321+/- acres of land along State Route 201 (aka Brandt Pike) and the Carriage Trails Parkway known as Parcel No. A01-016655 valued at \$175,000. Upon City Council acceptance of the terms and conditions of this Agreement, Purchaser shall contribute or gift the 2.321 +/- acreage to City, free and clear of all liens, rights to take liens, encumbrances not acceptable to Seller, with such transfer being effectuated via a donation deed, or dedication deed, as determined by Seller.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the parties' duly authorized representatives hereto have set their hands the day and year indicated below.

PURCHASER:

CARRIAGE TRAILS AT THE HEIGHTS LLC

By: _____

Printed Name: William W. Keethler II

Title: President

Date: _____

SELLER:

CITY OF HUBER HEIGHTS, OHIO

By: _____

City Manager

Date: _____

RECEIPT AND AGREEMENT

Receipt is hereby acknowledged by Stewart Title Company in the sum of Ten Thousand Dollars (\$10,000.00) as Earnest Money to be held subject to the terms of the above offer.

STEWART TITLE COMPANY

By: _____

Printed Name: _____

Date: _____

Exhibit A – Legal Depiction
Exhibit B – Purchaser's Conceptual Site Plan
Parcel A +/-14.96 acres (240 units multifamily)
Parcel B +/- 7.94 acres

Exhibit A
Legal Depiction

(exhibit on following page)



Exhibit B
Conceptual Site Plan

Parcel A +/-14.96 acres (240 units multifamily)

Parcel B +/- 7.94 acres

(exhibit on following page)



AI-10012

New Business N.

City Council Meeting

City Manager

Meeting Date: 04/22/2024

Continental 752 Fund, LLC - Development Agreement

Submitted By: Bryan Chodkowski

Department: Assistant City Manager

Council Committee Review?: Council Work Session

Division: Economic Development

Date(s) of Committee Review: 04/16/2024

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The Execution Of A Development Agreement With Continental 752 Fund, LLC.
(first reading)

Purpose and Background

The City of Huber Heights and Continental 752 Fund, LLC would like to enter into a development agreement (the "Agreement"). The Agreement provides for the development of ~15 acres of real property located on the west side of Brandt Pike (State Route 201), behind the Huber Heights Branch of the Dayton Montgomery County Metropolitan Library, addressed as 6243 Brandt Pike. The Developer proposes to construct ~288 units of market rate multi-family housing and the Agreement provides for the construction of the project and associated development incentives including the provision of related real property tax exemptions. The City and the Developer's affiliate, Continental Real Estate Holdings, LLC previously entered into a Purchase and Sales Agreement on October 23, 2023, via Resolution No. 2023-R-7331 in support and advancement of the Project.

The approval of this Development Agreement is a condition to close as outlined in the aforementioned Purchase and Sale Agreement between the parties. The Developer has expressed an interest to close on the purchase of property in June, 2024. Completion of this sale would yield ~\$750,000 to the City of Huber Heights.

In furtherance of this project, legislation establishing the Continental Meadows Tax Increment Finance (TIF) District will be presented to City Council in the near future. The establishment of this TIF District will allow the City to recover a portion of its investment costs in the redevelopment of The Meadows.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH
CONTINENTAL 752 FUND, LLC.

WHEREAS, the City of Huber Heights (the “City”) and Continental 752 Fund, LLC (the “Developer”) plan to enter into a development agreement (the “Agreement”); and

WHEREAS, the Agreement provides for the development of ~15 acres of real property located on the west side of Brandt Pike (State Route 201), behind the Huber Heights Branch of the Dayton Montgomery County Metropolitan Library addressed as 6243 Brandt Pike; and

WHEREAS, the Developer proposes to construct, or cause to be constructed, ~288 units of market rate multi-family housing (the “Project”); and

WHEREAS, the City and Developer have determined to enter the Agreement (attached hereto as Exhibit A) to provide for the construction of the Project and associated development incentives including the provision of related real property tax exemptions; and

WHEREAS, the City and the Developer’s affiliate, Continental Real Estate Holdings, LLC previously entered into a Purchase and Sales Agreement on October 23, 2023, via Resolution No. 2023-R-7331 in support and advancement of the Project; and

WHEREAS, to facilitate economic development within the City and the development of the Project, thereby improving the economic welfare of the people of the State of Ohio, the City of Huber Heights, this Council finds that it is in the best interest of the City to provide for the execution and delivery of the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The Agreement, by and between the City and Developer, attached hereto as Exhibit A, providing for the construction of the Project and the provision of development incentives, including the provision of related real property tax exemption for the purposes of facilitating economic development within the City and the creation of new jobs and employment opportunities, thereby improving the economic welfare of the people of the State of Ohio and City of Huber Heights is hereby approved and authorized with changes therein not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the City Manager and the Law Director.

Section 2. The City Manager, for and in the name of this City, is hereby authorized to execute the Agreement, provided further that the approval of changes thereto by that official, and their character as not being substantially adverse to the City, as reviewed and approved to form and content by the Law Director, shall be evidenced conclusively by the execution thereof.

Section 3. The Council further hereby authorizes and directs the City Manager, Director of Finance, Law Director, Clerk of Council, or other such appropriate offices of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Resolution.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2024;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

**EXHIBIT A
DEVELOPMENT AGREEMENT**

by and between

CITY OF HUBER HEIGHTS, OHIO

and

CONTINENTAL 752 FUND LLC

relating to

MARKET-RATE MULTI-FAMILY HOUSING DEVELOPMENT

dated as of

_____, 2024

TABLE OF CONTENTS

	Page
RECITALS	1
ARTICLE I DEFINITIONS	
Section 1.1 Use of Defined Terms	5
Section 1.2 Definitions.....	5
Section 1.3 Interpretation.....	10
ARTICLE II GENERAL AGREEMENT AND TERM	
Section 2.1 General Agreement Among Parties	12
Section 2.2 Term of Agreement.....	12
Section 2.3 Declaration of Covenants.....	12
ARTICLE III REPRESENTATIONS AND COVENANTS OF THE PARTIES	
Section 3.1 Representations and Covenants of the City	14
Section 3.2 Representations and Covenants of the Developer	15
ARTICLE IV MULTIFAMILY PROJECT	
Section 4.1 General.....	17
Section 4.2 Multifamily Project.....	17
Section 4.3 Submittal of Plans for Development Project	18
Section 4.4 Installation of Utilities, Roadways, Sidewalks and Streetlights	18
Section 4.5 Developer Obligations	24
Section 4.6 Permits	26
Section 4.7 Fees, Charges and Taxes.....	26
Section 4.8 Provision of City Services	27
Section 4.9 Insurance and Bonds	27
Section 4.10 Compliance with Laws	27
Section 4.11 Expeditious Completion of Multifamily Project.....	28
Section 4.12 Waiver of Unpaid Special Assessments	28
ARTICLE V COMMUNITY REINVESTMENT AREA	
Section 5.1 General.....	30
Section 5.2 Community Reinvestment Area # 7.....	30
Section 5.3 Compliance and Remedies Relating to the CRA Exemption	31
Section 5.4 Priority of Tax Exemptions.....	32
ARTICLE VI TAX INCREMENT FINANCING	
Section 6.1 General.....	33
Section 6.2 Statutory Service Payments	33

TABLE OF CONTENTS

(continued)

	Page
Section 6.3	Minimum Service Payment Obligation 33
Section 6.4	Information Reporting 36
Section 6.5	Non Discriminatory Hiring Policy 37

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

Section 7.1	Developer Default 38
Section 7.2	City Default 38
Section 7.3	Remedies 39
Section 7.4	Other Rights and Remedies; No Waiver by Delay 41
Section 7.5	Force Majeure 42

ARTICLE VIII

MISCELLANEOUS

Section 8.1	Assignment 43
Section 8.2	Binding Effect 43
Section 8.3	Captions and Headings 44
Section 8.4	Day for Performance 44
Section 8.5	Developer Mortgagee Rights 44
Section 8.6	Document Submissions to the City 45
Section 8.7	Entire Agreement 45
Section 8.8	Executed Counterparts 45
Section 8.9	Extent of Covenants; Conflict of Interest; No Personal Liability 46
Section 8.10	Governing Law 46
Section 8.11	Limits on Liability 47
Section 8.12	No Third-Party Beneficiary 47
Section 8.13	Notices 47
Section 8.14	Recitals and Exhibits 48
Section 8.15	Severability 48
Section 8.16	Survival of Representations and Warranties 48

Exhibit A -	Legal Description of the Property
Exhibit B -	Depiction of Multifamily Project
Exhibit C -	Form of Developer Declaration of Covenants

(END OF TABLE OF CONTENTS)

DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (this “*Agreement*”) is made and entered into this _____ day of _____, 2024 (the “*Effective Date*”) by and between the **CITY OF HUBER HEIGHTS, OHIO** (the “*City*”), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the “*State*”) and its Charter and **CONTINENTAL 752 FUND LLC**, a Delaware limited liability company (the “*Developer*” and together with the City, the “*Parties*” and each of the Parties individually referred to herein as a “*Party*”), under the circumstances summarized in the following recitals (terms used but not defined in the Recitals shall have the meaning set forth in Section 1.2):

RECITALS

WHEREAS, the Developer, through its affiliate, Continental Real Estate Holding LLC, has entered into a Real Property Purchase Agreement with the City, dated December 6, 2023, as such purchase agreement may hereafter be reasonably modified, extended or amended (the “*Purchase Agreement*”) for the purpose of acquiring approximately 15.00 contiguous acres of real property located within the City (which real property is described on **EXHIBIT A** attached hereto and is collectively referred to herein as the “*Property*”); and

WHEREAS, the Developer and City propose to create a market-rate multi-family housing project on the Property, and following acquisition of the Property, the Developer proposes to construct, or cause to be constructed, on the Property, an approximate 288+/- unit apartment development project (the “*Multifamily Project*”), a sample depiction of which appears on **EXHIBIT B** attached hereto; and

WHEREAS, the City has determined that the construction of the Multifamily Project is expected to result in the creation of employment opportunities within the City as well as the creation of various types of housing for its residents; and

WHEREAS, pursuant to the TIF Statute, City Council intends to adopt legislation (the “*TIF Ordinance*”) to establish a tax increment financing area thereby exempting from taxation any Improvements to the real property subject to the TIF Ordinance (which includes the Property) and requiring the current and future property owners of such real property to make service payments in lieu of taxes (those payments, and any other payments received by the City in connection with the TIF Ordinance under Ohio Revised Code Sections 319.302, 321.24, 323.152 and 323.156, or any successor provisions thereto, as the same may be amended from time to time, are collectively referred to as the “*TIF Payments*”); and

WHEREAS, City Council heretofore adopted Resolution No. 94-R-1453 on June 20, 1994, declaring a certain area within the City to be a Community Reinvestment Area (“CRA #7” which is also referred to as a Pre-1994 CRA), which CRA #7 was amended by Resolution No. 2010-R-5333, adopted on September 27, 2010, as modified by Resolution No. 2015-R-6195, adopted on June 8, 2015, and Resolution No. 2021-R-7036, adopted on September 13, 2021, and as amended by Resolution No 2022-R-7211, adopted on December 15, 2022 (collectively, the “*CRA Legislation*”); and

WHEREAS, the entire Property is located within CRA #7; and

WHEREAS, pursuant to the CRA Legislation, the City granted tax exemptions within CRA #7 for improvements to real property, as authorized by the CRA Statute, as follows: (i) a ten (10) year, 100% exemption for the remodeling of any dwelling existing as of June 20, 1994, containing not more than two family units upon which the cost of remodeling is at least three thousand dollars (\$3,000.00), as described in division (A) of Section 3735.67 of the Ohio Revised Code, (ii) a twelve (12) year, 100% exemption for every dwelling containing more than 2 units, commercial or industrial properties, upon which the cost of remodeling is at least five thousand dollars (\$5,000.00) as

described in division (B) of Section 3735.67 of the Ohio Revised Code, and (iii) a fifteen (15) year, 100% exemption for the construction of every commercial or industrial structure as described in division (C) of Section 3735.67 of the Ohio Revised Code, (collectively, the “*CRA Exemption*”); and

WHEREAS, the CRA Exemption is applicable to a multi-family development on the Property, which the Parties acknowledge would include the construction of the Multifamily Project, including but not limited to its approximate 288+/- unit apartment development contained in multiple dwellings (with each such structure having more than two residential units) and located collectively on one parcel with amenity building(s), and accessory structure(s); and

WHEREAS, the City wishes to confirm that the Multifamily Project proposed to be constructed upon the Property is eligible for the CRA Exemption so as to allow the Developer to acquire the Property and to develop the Multifamily Project in reliance on the availability of the CRA Exemption under the terms set forth in the CRA Legislation and subject to the CRA Statute; and

WHEREAS, the Parties have determined to enter into this Agreement to provide for the construction of the Multifamily Project, to confirm the availability of the CRA Exemption to support the Multifamily Project and to provide for the payment of Minimum Service Payments; and

WHEREAS, the City, by Resolution No. _____ passed by City Council on _____, 2024 authorized the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the premises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree and obligate themselves as follows:

(END OF RECITALS)

ARTICLE I

DEFINITIONS

Section 1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 shall have the meanings set forth in Section 1.2 unless the context or use clearly indicates another meaning or intent.

Section 1.2 Definitions. As used herein:

“*Agreement*” means this Development Agreement dated as of the Effective Date, by and between the City and the Developer.

“*Apartment Housing Complex*” means collectively all of the buildings and structures, or any portion thereof, occupied or constructed as apartments or living units within one or more dwellings or multi-unit housing structures, to be occupied by multiple families or occupants, and located on the Property, or a subdivided portion thereof. It shall also include any building constructed as a dedicated amenity or accessory used to support and sustain the operation of an apartment housing community on the Property.

“*City*” means the City of Huber Heights, Ohio, an Ohio municipality.

“*City Attorney*” means the City Attorney of the City or any person serving in an interim or acting capacity with respect to that office.

“*City Codified Ordinances*” means the Codified Ordinances of the City, as amended and supplemented from time to time.

“*City Council*” means the City Council of the City.

“*City Default*” shall have the meaning set forth in Section 7.2.

“*City Manager*” means the City Manager of the City or any person serving in an interim or acting capacity with respect to that office.

“*County*” means the County of Montgomery, Ohio.

“*County Auditor*” means the County Auditor of the County or any person serving in an interim or acting capacity with respect to that office.

“*County Recorder*” means the County Recorder of the County or any person serving in an interim or acting capacity with respect to that office.

“*CRA #7*” shall have the meaning set forth in the Recitals.

“*CRA Exemption*” shall have the meaning set forth in the Recitals.

“*CRA Legislation*” shall have the meaning set forth in the Recitals.

“*CRA Statute*” means, collectively, Sections 3735.65 through 3735.70 of the Ohio Revised Code, and those sections as each may hereafter be amended from time to time.

“*Declaration*” means the Declaration of Covenants (which shall be substantially in the form attached hereto as **EXHIBIT C**).

“*Developer*” means Continental 752 Fund LLC, a Delaware limited liability company.

“*Developer Default*” shall have the meaning set forth in Section 7.1.

“*Developer Mortgage*” shall have the meaning set forth in Section 8.5.

“*Developer Mortgagee*” shall have the meaning set forth in Section 8.5.

“*First Annual MSP Invoice Deadline*” shall have the meaning set forth in Section 6.3(b).

“*Improvements*” shall have the same meaning as set forth in Ohio Revised Code Section 5709.40(A)(4).

“*Minimum Service Payment*” means each payment required to be made to the City pursuant to Section 6.3(c).

“*Minimum Service Payment Obligation*” shall have the meaning set forth in Section 6.3.

“*MSP Invoice Deadline*” shall have the meaning set forth in Section 6.3(b).

“MSP First Payment Year” means the calendar year immediately following the first calendar year in which any type of certificate of occupancy is issued for the first structure that is a portion of the Apartment Housing Complex, provided that the structure is exempted from real property taxation for that tax year pursuant to the CRA Resolution and in accordance with this Agreement. For example, if the first certificate of occupancy issued is a temporary certificate of occupancy for the Apartment Housing Complex and that certificate of occupancy is issued in June 2025, the MSP First Payment Year will be calendar year 2027, provided the Apartment Housing Complex is subject to the CRA Exemption for tax year 2026 (property tax payment year 2027). In other words, the MSP First Payment Year will be the calendar year after the tax year Apartment Housing Complex first receives benefit from the CRA Exemption (e.g. if the CRA Exemption first applies to tax year 2026, the MSP First Payment Year will be calendar year 2027). The parties acknowledge that the actual timing of the first year the CRA Exemption goes into effect will be determined by the Montgomery County Auditor, in the ordinary course of business.

“MSP Last Payment Year” means the 14th year after the MSP First Payment Year. For example, if the MSP First Payment Year is calendar year 2026, the MSP Last Payment Year is calendar year 2040.

“Multifamily Project” means the Apartment Housing Complex built and owned under a common or affiliated owners, and operated and managed collectively under a common brand or similar community name.

“Multifamily Project Site” shall have the meaning set forth in Section 2.3.

“Notice Address” means:

as to the City: City of Huber Heights, Ohio
6131 Taylorsville Road
Huber Heights, Ohio 45424
Attention: City Manager
Telephone: (937) 233-1423
Facsimile: (937) 233-1272

With a duplicate to: City of Huber Heights-Law Department
2700 Kettering Tower
Pickrel Schaeffer & Ebeling
Dayton, Ohio 45423
Attention: Law Director
Telephone: (937) 223-1130

as to the Developer: Continental 752 Fund LLC
W134N8675 Executive Parkway
Menomonee Falls, WI 53051
Attention: Legal Department
Telephone: (262) 502-5500

With a duplicate to:

“*Owner*” shall have the meaning set forth in Section 2.3.

“*Parties*” means, collectively, the City and the Developer.

“*Purchase Agreement*” shall have the meaning set forth in the Recitals.

“*Real Property Tax Exemption Recipient*” shall have the meaning set forth in Section 5.3.

“*Second Annual MSP Invoice Deadline*” shall have the meaning set forth in Section 6.3(b).

“*State*” means the State of Ohio.

“*TIF Exemption*” means the exemption from real property taxation for the Improvements as authorized by the TIF Statute and the TIF Ordinance.

“*TIF Ordinance*” means, that legislation adopted by the City Council subsequent to the execution of this Agreement, in accordance with the TIF Statute, for the express purpose of providing a TIF Exemption for the Multifamily Project.

“*TIF Payments*” means those monies distributed by the County to the City in respect of the TIF Exemption and which will include service payments in lieu of taxes remitted by owners of real property subject to the TIF Exemption and any other payments received by the City in connection with the TIF Ordinance under Ohio Revised Code Sections 319.302, 321.24, 323.152 and 323.156, or any successor provisions thereto, as the same may be amended from time to time.

“*TIF Statute*” means, collectively, Sections 5709.40, 5709.42, 5709.43 and 5709.51 of the Ohio Revised Code, and those sections as each may hereafter be amended from time to time.

Section 1.3 Interpretation. Any reference in this Agreement to the City or to any officers of the City includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, a section, provision or chapter of the Ohio Revised Code, or a section or provision of the City Codified Ordinances includes the section, provision or chapter as modified, revised, supplemented or superseded from time to time; *provided*, that no amendment, modification, revision, supplement or superseding section, provision or chapter will be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “*hereof*”, “*hereby*”, “*herein*”, “*hereto*”, “*hereunder*” and similar terms refer to this Agreement; and the term “*hereafter*” means after, and the term “*heretofore*” means before, the date of this Agreement. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Agreement, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Agreement.

(END OF ARTICLE I)

ARTICLE II

GENERAL AGREEMENT AND TERM

Section 2.1 General Agreement Among Parties. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements between the Parties, the Parties intend to and shall cooperate in the manner described herein to facilitate the design, financing, construction, acquisition and installation of the Multifamily Project.

Section 2.2 Term of Agreement. This Agreement shall become effective as of the Effective Date and will continue until the Parties' respective obligations set forth herein have been fulfilled, unless earlier terminated in accordance with this Agreement. For the avoidance of doubt, Developer's obligations under this Agreement will be deemed fulfilled once (i) the Developer has completed the Multifamily Project in accordance with the terms hereof, as evidenced by an unconditional and final certificate of occupancy for all structures within the Multifamily Project, and filed for the CRA Exemption for each building in accordance with Section 5.2(c) hereof, and (ii) the Developer has recorded the Declaration against the Multifamily Project Site. The City's obligations under this Agreement will be deemed fulfilled once (i) the City has completed and accepted (as applicable) the public infrastructure improvements described in Section 4.4 hereof, and (ii) processed any necessary paperwork needed to effect the CRA Exemption. For the avoidance of doubt, the City's obligations under Section 5.3, shall continue after termination of this Agreement for the duration of the CRA Exemption. For the avoidance of doubt, the Developer's obligations under the Declaration against the Multifamily Project Site shall continue after termination of this Agreement.

Section 2.3 Declaration of Covenants.

(a) Filing. It is intended and agreed, and it will be so provided by the Developer in the Declaration relating to the Property upon which the Multifamily Project is constructed (the “*Multifamily Project Site*”) that certain covenants set forth herein shall hereafter be binding upon owners of the Multifamily Project Site (each, including the Developer, during its period of ownership of the Multifamily Project Site, an “*Owner*”). Except as otherwise provided in the Declaration, the covenants set forth in the Declaration are hereby incorporated into this Agreement by this reference.

(b) Termination. Upon satisfaction of the obligations of the Developer related to the Multifamily Project to make the TIF Payments and the Minimum Service Payments, the City will, upon the request of the Developer or an Owner, execute an instrument in recordable form evidencing the termination of the Declaration with respect to the Property, or any applicable portion thereof, and releasing the covenants running with the land as set forth in the Declaration with respect to the Developer’s or that Owner’s portion of the Property.

(END OF ARTICLE II)

ARTICLE III

REPRESENTATIONS AND COVENANTS OF THE PARTIES

Section 3.1 Representations and Covenants of the City. The City represents and covenants that:

(a) It is a municipal corporation duly organized and validly existing under the Constitution and applicable laws of the State and its Charter.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to it that would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. That execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to it, including its Charter, and does not and will not conflict with or result in a default under any agreement or instrument to which it is a party or by which it is bound.

(d) This Agreement has, by proper action, been duly authorized, executed and delivered by it and all steps necessary to be taken by it have been taken to constitute this Agreement, and its covenants and agreements contemplated herein, as its valid and binding obligations, enforceable in accordance with their terms.

(e) There is no litigation pending or threatened against or by it wherein an unfavorable ruling or decision would materially adversely affect its ability to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

(g) Resolution No. _____ passed by City Council on _____, 2024 authorizing the execution and delivery of this Agreement, has been duly passed and is in full force and effect as of the Effective Date.

Section 3.2 Representations and Covenants of the Developer. The Developer represents and covenants that:

(a) It is a for profit limited liability company duly organized and validly existing under the applicable laws of the State of Delaware.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to it that would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. That, execution, delivery and to Developer's knowledge performance does not and will not violate or conflict with any provision of law applicable to the Developer and additionally does not and will not conflict with or result in a default under any agreement or instrument to which it is a party or by which it is bound.

(d) This Agreement has, by proper action, been duly authorized, executed and delivered by it and all steps necessary to be taken by it have been taken to constitute this Agreement, and its covenants and agreements contemplated herein, as its valid and binding obligations, enforceable in accordance with their terms.

(e) It is not aware of any litigation pending or threatened against or by it wherein an unfavorable ruling or decision would materially adversely affect its ability to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

(END OF ARTICLE III)

ARTICLE IV

MULTIFAMILY PROJECT

Section 4.1 General. The Developer agrees that it will proceed in good faith and with all reasonable dispatch to design, finance and construct, or cause to be designed, financed and constructed, the Multifamily Project and to perform any and all of its duties and obligations relating to the Multifamily Project in a manner consistent with this Agreement, subject to market conditions as they may exist from time to time during the term of this Agreement.

Section 4.2 Multifamily Project. Subject to economic conditions supporting the development of the Multifamily Project and the Developer securing adequate approvals, including, but not limited to, approvals from any jurisdiction to which the Multifamily Project is subject, including any zoning changes or variance, as each are determined by the Developer in its sole and complete discretion, the Parties acknowledge and agree that the Multifamily Project that will be developed, or caused to be developed, by the Developer and is expected to be approved by the City (which approval will not be unreasonably conditioned, delayed or withheld) as follows:

(a) The Developer will construct an approximate 288+/- unit market-rate multi-family housing use on the Multifamily Project Site. The Multifamily Project is targeted for completion and available for full occupancy in December 2026 or as may be reasonably economically feasible to complete at any time before or after that estimated date. The Developer estimates that the Multifamily Project will have a total fair market value of approximately Thirty Eight Million Eight Hundred Eighty Thousand Fifty Five Dollars (\$38,880,055.00) upon completion.

(b) The Developer anticipates that approximately 100 temporary jobs will be created in connection with the construction of the Multifamily Project and approximately 4 permanent jobs will be created at the Multifamily Project when it is fully completed and occupied.

Section 4.3 Submittal of Plans for Development Project. For the Multifamily Project, the Developer shall prepare and submit a site plan, architectural rendering(s) in compliance with project zoning and design standards as required under the Huber Heights PUD zoning ordinances, and related development plans to the City, in such detail as is reasonably necessary for review and approval by appropriate City Boards or Commissions in accordance with the ordinary exercise of their respective rights and duties, all pursuant to and in accordance with the pertinent City Codified Ordinances.

Section 4.4 Installation of Utilities, Roadways, Sidewalks and Streetlights. To support the development of the Multifamily Project, including the installation of utilities, roadways, sidewalks and streetlights, each Party shall have the responsibilities set forth below and for the avoidance of doubt it is understood that the City is only responsible for maintaining infrastructure within the public right of way or other public easement:

(a) Water. Except as otherwise provided herein, at no cost to the City, it shall be the obligation of the Developer to construct the water lines, hydrants, valves, and related appurtenances within the Multifamily Project to service only the Apartment Housing Complex, which water lines, hydrants, valves, and related appurtenances shall be installed and inspected pursuant to plans and specifications approved by the City Engineer in accordance with the City's standard requirements. The domestic water network will be composed of a tap connection and public extension within a recorded public easement onto the Apartment Housing Complex portion of the Property, connecting to a municipal utility provider-approved meter and backflow assembly, generally thereafter further consisting of an appropriately sized underground fire water loop routed throughout the site and to building structures within a recorded public easement, servicing fire hydrants, fire sprinkler systems, standpipes and other emergency connections, as well as an

appropriately sized underground private water loop routed throughout the site and to building structures servicing the domestic and potable water infrastructure requirements of the Multifamily Project. The City hereby confirms that it will supply water services to the Multifamily Project, including maintenance of any water lines and related appurtenances accepted by the City as public improvements, under the terms and conditions that it supplies such services to similarly situated customers and that it has, and will have, sufficient capacity to supply such services to the Multifamily Project during the term of this Agreement. The City further agrees that it is responsible for the construction, repair and maintenance of the water lines, hydrants, valves, and related appurtenances in and around Miami Valley Way and Meadows Park Drive as shown on those certain Public Improvement Plans for: Meadows Park Drive prepared by Burkhardt Engineers Project 23.185 (“**Water Improvements**”) and that subject to Force Majeure (as defined hereafter), such improvements shall be substantially complete and suitable for Developer’s use by July 12, 2024 (“**Outside Date**”).

(b) Sanitary Sewer. Except as otherwise provided herein, at no cost to the City, it shall be the obligation of the Developer to construct the sanitary sewer lines and related appurtenances within the Multifamily Project to service exclusively the Apartment Housing Complex, which sanitary sewer lines and related appurtenances shall be installed and inspected pursuant to plans and specifications approved by the City Engineer in accordance with the City’s standard requirements and will be dedicated and an easement granted to the City. The City hereby confirms that it will supply sanitary sewer services to the Multifamily Project, including maintenance of any sanitary sewer lines and related appurtenances accepted by the City as public improvements, under the terms and conditions that it supplies such services to similarly situated customers and that it has, and will have, sufficient capacity to supply such services to the Multifamily Project during

the term of this Agreement. The City further agrees that it is responsible for the construction, repair and maintenance of the sanitary sewer lines and related appurtenances in and around Miami Valley Way and Meadows Park Drive as shown on those certain Public Improvement Plans for: Meadows Park Drive prepared by Burkhardt Engineers Project 23.185 (“**Sewer Improvements**”) and that subject to Force Majeure, such improvements shall be substantially complete and suitable for Developer’s use by the Outside Date.

(c) Storm Sewer. Except as otherwise provided herein, at no cost to the City, the Developer shall provide to the City storm sewer drainage easements, as necessary, and will dedicate a storm sewer collection system and related onsite detention and/or retention ponds to the City, as necessary. Regardless of whether such storm sewer facilities are dedicated to the City or private, such facilities will be designated on the detailed development plan(s), civil design construction documents and/or plat(s) to service the Apartment Housing Complex of the Multifamily Project. The Developer shall provide all of the detention to service the Apartment Housing Complex for the Multifamily Project on the Property and the City shall not require Developer to handle any off-site detention or detention from portions of the Property not dedicated to use as the Apartment Housing Complex. The exact location and size of such storm sewer drainage easements and on-site ponds shall be determined by (i) the detailed development plan(s), civil design construction documents and/or final plat(s) as approved by the City, consistent with the zoning thereof, as herein provided, (ii) engineering standards and (iii) all other applicable rules and regulations. Except for any such improvements publicly dedicated to the City via easement or other agreement, the Developer shall be responsible for all maintenance of the storm sewer management system (including but not limited to underground storm sewer pipes and ponds) located within the Property and servicing the Apartment Housing Complex of the Multifamily

Project. The Developer shall not be responsible for maintenance of any publicly dedicated storm sewer improvements.

Each Party covenants and agrees that all roadway, utility and other construction and development work undertaken by that Party (or any third-party upon the direction of that Party) will be designed and performed in such a manner as not to disrupt or otherwise interfere with any existing storm sewer drainage systems (surface, field tile or other) on or off of the Property except to the extent modification of any existing storm sewer drainage systems are expressly contemplated by approved plans and the constructing Party uses commercially reasonable efforts to limit any disruption of such systems.

(d) Roadways.

(i) Private Roads. Except as otherwise provided herein, all private drives and internal roads on the Property servicing the Apartment Housing Complex within the Multifamily Project shall be constructed by the Developer, at no cost to the City, as needed for its intended use of the Multifamily Project. All private drives and internal roads servicing the Apartment Housing Complex shall be (A) constructed in accordance with the standards customarily employed by a multi-family developer for projects of a similar scope and size, (B) designed in accordance by a licensed professional engineering firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of Ohio, and (C) located in accordance with final development plans and permits approved by the City.

(ii) Public Roads on Property. If the Parties agree that the construction of any public roads or public road modifications are required on the Property, all such public roads or public road modifications on the Property shall be constructed by the Developer, at no

cost to the City, in accordance with City standards, and as may be applicable and appropriate to the type of road being constructed. Any such public roads or public road modifications constructed on the Property under this Agreement shall be (A) located within current or future dedicated right of way, and (B) reviewed, inspected and approved by the City. The City shall be responsible for maintenance of any public roads and related appurtenances accepted by the City as public improvements.

(iii) Adjacent Public Roads. The City acknowledges agrees that it is responsible for the construction, repair and maintenance of the extension of Miami Valley Way and Meadows Park Drive as shown on those certain Public Improvement Plans for: Meadows Park Drive prepared by Burkhardt Engineers Project 23.185 (“**Road Improvements**” and collectively with the Water Improvements and Sewer Improvements, the “**Public Improvements**”) and that subject to Force Majeure, such improvements shall be substantially complete and suitable for Developer’s use by the Outside Date subject to any extension of the Outside Date due to Developer being delinquent in making an installment of the Roadway Deposit as set forth in section 32 of the Purchase Agreement, which section is incorporated herein by this reference.

(e) In the event substantial completion of the Public Improvements is not substantially completed by the Outside Date (subject to extension of the Outside Date in accordance with paragraph (d) above) and Closing has occurred, then in such event the parties agree Developer would suffer damages, however the ability to ascertain the amount of such damages would be difficult, if not impossible to ascertain. As such, in said event, City shall pay to Developer liquidated damages for delay in the amount of Four Hundred and no/100 Dollars (\$400.00) per

day (excluding Sundays and documented weather delays) until the Public Improvements are substantially completed.

(f) Cross Easements for Utility Services. The Parties agree among themselves to grant, without charge, reciprocal cross-easements or easements to public or private utilities, as appropriate, for construction of utilities described in this Section 4.4, or other public or private utilities to service the Multifamily Project; *provided, however*, that all easements shall be within or adjacent to the various proposed public roads or driveway rights-of-way, as set forth on the revised basic development plan for the Multifamily Project, except as may otherwise be reasonably necessary to assure utility services to all parts of the Apartment Housing Complex. Easements for surface drainage shall follow established water courses, unless otherwise agreed to by the affected Party. The Parties shall reasonably cooperate to ensure any proposed easements do not interfere with the development of the Apartment Housing Complex. The Developer shall restore any easement areas to a condition which is reasonably satisfactory to the City promptly following any construction work by the Developer. The City shall restore any easement areas following any construction work by the City in accordance with the City Codified Ordinances and/or the terms of such easement documents.

(g) Dedication. All public utilities and public roadways (including related rights-of-way) installed and/or constructed within the Multifamily Project (except the utility cross easements described in Section 4.4(e)) shall be dedicated (free and clear of any liens, encumbrances and restrictions except as may be permitted in writing by the City) to the City, which agrees to accept such dedication, and recorded with the County Recorder at such time as is consistent with the City Codified Ordinances and the terms of this Agreement.

(h) Cooperation. The City agrees to work cooperatively with the Developer to support the Multifamily Project and timely review and act on any requests for City approvals, permits or inspections.

(i) Subject to Appropriation. The City's obligation to pay liquidated damages under Section 4.4(e), to the extent not already appropriated by the City Council, remain subject to appropriation by the City Council (such obligations being the "Liquidated Damages"). Provided that any requests for Liquidated Damages under this Agreement are consistent with the terms hereof, the administration of the City will present to the City Council for consideration legislation providing for appropriation of the Liquidated Damages in question.

Section 4.5 Developer Obligations.

(a) The Developer shall be responsible for developing the Apartment Housing Complex and the Multifamily Project in accordance with the detailed development plans, as may be modified from time to time, and as such plans are approved by the City as hereinbefore provided. Except as otherwise provided in this Agreement, the Developer shall provide all funds necessary to develop the Apartment Housing Complex and to design, finance and construct the Apartment Housing Complex of the Multifamily Project. Unless a later date applies to a given obligation, as expressly set forth in this Agreement, the obligations under this Agreement of the Developer shall, as to the Multifamily Project, commence on the later of (i) the first date on which all titles to the parcel(s) upon which the Multifamily Project is to be constructed is/are transferred to the Developer as evidenced by the recordation of the deed(s) to said parcel(s); or (ii) the Effective Date of this Agreement.

Section 4.6 Permits. Prior to commencing construction of any portion of the Apartment Housing Complex of the Multifamily Project, the Developer shall obtain all necessary permits

from all levels of government having jurisdiction thereover to allow the Developer to build and develop such portion of the Apartment Housing Complex of the Multifamily Project consistent with the detailed development plan(s) for the Multifamily Project. Standards for permit approval shall comply with all applicable standards (as may be set forth in City Codified Ordinances or elsewhere) at the time of zoning permit application or, in the case of the City administrative plan review requirements, at the time of application for those predevelopment permits.

Section 4.7 Fees, Charges and Taxes. The Developer shall, as and when customarily payable to the City on projects comparable to the Apartment Housing Complex of the Multifamily Project, pay the then-current standard fees in connection with any construction of the Apartment Housing Complex of the Multifamily Project, which fees shall include, but not be limited to, fees for the provision of water, sanitary sewer and storm sewer services, and which fees, the City agrees, will be determined in a manner consistent and uniform with the manner of fee determination by the City on projects comparable to the Multifamily Project. The Developer acknowledges and agrees that the City reserves the right to adjust the standard fees described in this Section 4.7 from time to time in a manner consistent and uniform with the manner of fee determination by the City on projects comparable to the Apartment Housing Complex of the Multifamily Project. The Developer shall also ensure that any other standard fees, sales and use taxes, if any, and license and inspection fees necessary for the completion of the Apartment Housing Complex of the Multifamily Project shall be timely paid, subject to any applicable exemptions.

Section 4.8 Provision of City Services. The City agrees to provide to the Multifamily Project all City services usually and customarily provided by the City, including but not limited to, fire and police protection and road maintenance on dedicated and accepted public streets consistent with its City-wide street maintenance program; provided *however*, the City shall not be

required to construct and install improvements related to the provision of those services except as may be required as part of a general duty to provide a basic obligation of public service or otherwise provided herein.

Section 4.9 Insurance and Bonds. Insurance and bonds shall be provided by the Developer or its contractors and subcontractors during the course of development of the Apartment Housing Complex of the Multifamily Project only if, and as otherwise required by, the City Codified Ordinances and other applicable development regulations.

Section 4.10 Compliance with Laws. In connection with the construction of the Multifamily Project and in performing its obligations under this Agreement, the Developer agrees that it shall comply with, and require all of its employees, agents, contractors and consultants to comply with, all applicable federal, state, county, or municipal laws (including City Codified Ordinances) in all material respects; provided, however, that nothing in this Section shall prohibit Developer from contesting in good faith the application of any such laws in an appropriate forum.

Section 4.11 Expeditious Completion of the Multifamily Project. The Parties agree that the expeditious completion of the Multifamily Project will benefit both Parties. To that end, the Parties agree to act in good faith and in a cooperative manner to complete the Multifamily Project in accordance with the terms of this Agreement and subject to market conditions as they may exist from time to time during the term of this Agreement. The City also agrees to act in good faith and diligently review the various applications and other matters which must be approved by the City as compliant with applicable laws and regulations in connection with the Multifamily Project; *provided, however,* the Developer acknowledges and agrees that the various approvals of the City relating to planning and zoning described in this Article IV shall not be effective until approved by the appropriate body as contemplated hereby. The Parties each agree that the City shall have

no responsibility relative to the marketing or sale of the real property or improvements thereto within the Multifamily Project.

(END OF ARTICLE IV)

ARTICLE V

COMMUNITY REINVESTMENT AREA

Section 5.1 General. The Parties acknowledge that the provision of real property tax exemptions in respect of the Multifamily Project Site will be important to facilitate the construction of the Multifamily Project.

Section 5.2 Community Reinvestment Area #7. The Parties agree that:

(a) In accordance with the CRA Legislation, the City has provided for a CRA Exemption applicable to the Multifamily Project Site, which as set forth in the CRA Legislation, includes a fifteen (15) year, 100% real property tax exemption for the construction of every commercial or industrial structure (which, for the avoidance of doubt, includes each structure that comprises a portion of the Apartment Housing Complex) as described in division (C) of Section 3735.67 of the Ohio Revised Code for properties located within CRA #7.

(b) To facilitate the construction of the Multifamily Project, to create employment opportunities within the City as well as the creation of various types of housing for its residents, and in consideration for the Developer's covenants set forth herein, the City hereby confirms that it has, through the CRA Legislation, provided for the aforementioned CRA Exemption, and that such CRA Exemption is available to Developer for the Multifamily Project Site under the terms of the CRA Legislation, the CRA Statute and this Agreement.

(c) The Developer agrees related to the Multifamily Project Site to file with the City one or more CRA real property tax exemption applications. The Parties agree that the CRA Exemption shall commence for each structure that comprises a portion of the Apartment Housing Complex with the tax year identified by the Developer for that structure in the CRA real property tax exemption application, provided that the CRA Exemption for each structure shall commence

no later than the first tax year after that structure is completed. The Developer shall file a CRA real property tax exemption application for the structure that contains the final living unit within the Apartment Housing Complex no later than within ninety (90) days following the issuance (which issuance will not be unreasonably conditioned, withheld or delayed) by the City of a certificate occupancy therefor and shall include with that application (i) confirmation that construction of the final unit in the Apartment Housing Complex has been completed, and (ii) confirmation of the number of units included in the Apartment Housing Complex. The Parties acknowledge that the Developer may develop the Apartment Housing Complex in one or more phases, as determined by the Developer in its sole and complete discretion, and that the Developer may submit a CRA real property tax exemption application to the City for any structure included within a phase or portion of the development of the Apartment Housing Complex.

The City agrees that promptly following confirmation of each application filed in accordance with this Section 5.2(c), the City will approve a fifteen (15) year, 100% real property tax exemption in respect of each structure that comprises a portion of the Apartment Housing Complex, all in accordance with the CRA Legislation.

Section 5.3 Compliance and Remedies Related to the CRA Exemption.

(a) The City agrees that for so long as an Owner is the recipient of a real property tax exemption in accordance with Section 5.2(c) (each a “*Real Property Tax Exemption Recipient*”) and that Real Property Tax Exemption Recipient is complying with the terms of Section 5.2(c), and then notwithstanding the occurrence of a Developer Default or any other default hereunder by actions or inactions of the Developer (provided that such default is not caused by the action or inaction of that Real Property Tax Exemption Recipient), the City shall not take action to reduce

the exemption percentage and/or the term of the real property tax exemption as such would apply to the Real Property Tax Exemption Recipient.

(b) The Developer further agrees that if the City determines in good faith that an Owner fails to make any required Minimum Service Payment within thirty (30) days of written notice thereof (it being understood that invoices provided under Section 6.3 hereof constitute such notice) , the City may thereafter take action against the Owner, which shall be proportionate to the default to reduce the applicable exemption percentage and/or the term of the real property tax exemption and/or the City may increase the Minimum Service Payments applicable to the Owner under Section 6.3 to a higher amount but in no event higher than the amount that Owner would have paid in real estate taxes but for the CRA exemption.

Section 5.4 Priority of Tax Exemptions. The City agrees that the TIF Exemption shall be subordinate to the CRA Exemption. The Housing Officer shall designate in the Housing Officer's approval of a CRA real property tax exemption application that the CRA Exemption shall have priority with respect to the Multifamily Project Site over the TIF Exemption.

(END OF ARTICLE V)

ARTICLE VI

TAX INCREMENT FINANCING

Section 6.1 General. The Parties acknowledge that City Council heretofore passed the TIF Ordinance which provides for, among other terms, the application of the TIF Exemption to the Multifamily Project Site and identification of certain public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, the Multifamily Project Site.

Section 6.2 Statutory Service Payments. The Developer, on behalf of itself and each Owner, agrees to make TIF Payments attributable to its respective period of ownership of the Multifamily Project Site, all pursuant to and in accordance with the requirements of the TIF Statute, and any subsequent amendments or supplements thereto, the TIF Ordinance and this Agreement, and as further set forth in the Declaration.

Section 6.3 Minimum Service Payment Obligation.

(a) General. The Developer, on behalf of itself and each Owner, acknowledges and agrees that the Multifamily Project Site is also subject to a minimum service payment obligation (the "*Minimum Service Payment Obligation*"), which constitutes a minimum service payment obligation under Ohio Revised Code Section 5709.91. The Minimum Service Payment Obligation shall begin in the MSP First Payment Year and continue through and including the MSP Last Payment Year. Notwithstanding any other provision of this Agreement, the Minimum Service Payment Obligation shall cease after the MSP Last Payment Year.

(b) Invoices and Timing. The City shall send invoices to collect the Minimum Service Payments as follows:

(i) No later than January 15 in each year in which the Minimum Service Payment is due, the City shall send an invoice to each Owner (at the registered address for purpose of receiving real property tax statements) stating the amount due which shall equal 50% of the applicable Minimum Service Payment for that year, and state that payment is due the later of: (i) thirty (30) days after the date the invoice is delivered to the Owner or (ii) February 15 of the year for which the Minimum Service Payment is being collected (the “*First Annual MSP Invoice Deadline*”), and

(ii) No later than June 15 in each year in which the Minimum Service Payment is due, the City shall send an invoice to each Owner (at the registered address for purpose of receiving real property tax statements) stating the amount due which shall equal 50% of the applicable Minimum Service Payment for that year, and state that payment is due the later of: (i) thirty (30) days after the date the invoice is delivered to the Owner or (ii) July 15 of the year for which the Minimum Service Payment is being collected (the “*Second Annual MSP Invoice Deadline*” and collectively with the First Annual MSP Invoice Deadline, the “*MSP Invoice Deadline*”).

(c) Annual Minimum Service Payment Obligations. The aggregate annual amount of the Minimum Service Payments for the Multifamily Project Site shall equal:

<u>Year</u>	<u>Annual Amount</u>
MSP Payment Years 1-5	\$20,000.00
MSP Payment Years 6-15	\$0.00

(d) Apportionment of Minimum Service Payment Obligation Among Multiple Owners.
In the event the Multifamily Project Site is owned by more than one Owner, the City shall collect the Minimum Service Payments on a pro rata basis among such Owners based on the then-assessed

value of each such Owner's property in proportion to the assessed value of all such Owners' property.

(e) Delinquencies, Administrative Fees and Interest. If a Minimum Service Payment is not received by the City within thirty (30) days after the applicable MSP Invoice Deadline, the City may assess a non-paying Owner with a 10% administrative fee together with interest accruing at an annual rate of 10% on the portion of any Minimum Service Payment that remains unpaid from that Owner. The City may certify delinquent Minimum Service Payments, fees and interest to the County Auditor for collection on real property tax bills. Any late payments of amounts so certified will bear penalties and interest at the then current rate established under Ohio Revised Code Sections 323.121 and 5703.47 or any successor provisions thereto, as the same may be amended from time to time. In no event shall the Minimum Service Payment Obligation for the Multifamily Project Site equal less than zero dollars. The Developer, on behalf of itself and the Owners, acknowledges that the provisions of Ohio Revised Code Section 5709.91, which specify that the TIF Payments and the Minimum Service Payments will be treated in the same manner as taxes for all purposes of the lien described in Ohio Revised Code Section 323.11 including, but not limited to, the priority of the lien and the collection of TIF Payments and Minimum Service Payments applies to the Multifamily Project Site and any improvements thereon.

(f) Failure to Send Invoice. Failure by the City to send an invoice to an Owner for a Minimum Service Payment in accordance with this Section shall not invalidate Developer's/Owner's obligation to make such payment(s). However, such failure shall invalidate City's right to assess fees and interest as outlined in this Section for Owner's failure to remit or timely remit Minimum Service Payments as required herein. The MSP Payment obligation contained herein shall not be subject to the Force Majeure provision of section 6.5, unless the Force

Majeure specifically affects either (i) the means by which the MSP Payment is transmitted, or (ii) the ability of the Owner to receive the invoice for the Minimum Service Payment.

(g) Foreclosure and Acceleration. In the event that any portion of the Multifamily Project Site is subject to an action that would impair or foreclose the lien created by the Declaration (such as a property tax foreclosure action), and provided that the Multifamily Project Site is still subject to the Minimum Service Payment Obligation at the time that such foreclosure becomes effective, the City may declare immediately due and payable all Minimum Service Payments projected to be due from that portion in the then-current year or any future year (through and including the Minimum Service Payment Last Payment Year). Except as set forth in this Section 6.3, no other Minimum Service Payment shall be owed for the Multifamily Project Site, or any portion thereof.

Section 6.4 Information Reporting. The Developer covenants to cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated tax incentive review council to enable that tax incentive review council to review and determine annually during the term of this Agreement the Developer's compliance with the terms of this Agreement. Any information supplied to such tax incentive review council will be provided solely for the purpose of monitoring the Developer's compliance with this Agreement.

The Developer further covenants to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status report required by Ohio Revised Code Section 5709.40(I) to the Director of the Ohio Department of Development on or before March 31 of each year the exemption for the Multifamily Project Site provided by the TIF Ordinance is in effect. Any information supplied to the City will be provided solely for the purpose of enabling the City to comply with this requirement.

Section 6.5 Non Discriminatory Hiring Policy. With respect to operations within the City, the Developer will comply with the City’s policies adopted pursuant to Ohio Revised Code Section 5709.832 to ensure that recipients of tax exemptions (under the TIF Ordinance and the CRA Legislation) practice nondiscriminatory hiring in its operations. In furtherance of that policy, the Developer will agree that it will not deny any individual employment solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

(END OF ARTICLE VI)

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

Section 7.1 Developer Default. Any one or more of the following shall constitute a Developer Default under this Agreement:

(a) Default by the Developer in the due and punctual performance or observance of any material obligation under this Agreement and such default is not cured within thirty (30) days after written notice from the City, *provided* that if the default is of a non-monetary nature and cannot reasonably be cured within thirty days, a Developer Default shall not be deemed to occur so long as the Developer commences to cure the default within the thirty-day period and diligently pursues the cure for completion within a reasonable time;

(b) Any representation or warranty made by the Developer in this Agreement is false or misleading in any material respect as of the time made;

(c) The filing by the Developer of a petition for the appointment of a receiver or a trustee with respect to it or any of its property;

(d) The making by the Developer of a general assignment for the benefit of creditors;

(e) The filing of a voluntary petition in bankruptcy or the entry of an order for relief pursuant to the federal bankruptcy laws, as the same may be amended from time to time, with the Developer as debtor, and such petition is not dismissed within sixty (60) days; or

(f) The filing by the Developer of an insolvency proceeding with respect to such party or any proceeding with respect to such party for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors.

Section 7.2 City Default. Any one or more of the following shall constitute a City Default under this Agreement:

(a) Default by the City in the due and punctual performance or observance of any material obligation under this Agreement and such default is not cured within thirty (30) days after written notice from the Developer, *provided* that if the default is of a non-monetary nature and cannot reasonably be cured within thirty days, a City Default shall not be deemed to occur so long as the City commences to cure the default within the thirty day period and diligently pursues the cure for completion within a reasonable time;

(b) Any representation or warranty made by the City in this Agreement is false or misleading in any material respect as of the time made;

(c) The filing of a voluntary petition in bankruptcy or the entry of an order for relief pursuant to the federal bankruptcy laws, as the same may be amended from time to time, with the City as debtor; or

(d) Any repeal of the CRA Legislation or the TIF Ordinance or reduction or elimination of the real property tax exemptions granted thereunder except as otherwise provided herein.

Section 7.3 Remedies.

(a) In the event that the Developer shall create or suffer a Developer Default under this Agreement which remains uncured as aforesaid, or in the event that the City shall create or suffer a City Default under this Agreement which remains uncured as aforesaid, or in the event of any dispute arising out of or relating to this Agreement which does not necessarily rise to the level of a default hereunder, then absent facts or circumstances which compel a Party's pursuit of immediate injunctive or other equitable relief, the Parties agree to and shall first proceed as follows prior to pursuit of any other remedies hereunder, in equity or at law:

(i) the complaining Party shall notify the other Party in writing of the dispute and/or claimed default, and thereafter the Parties shall undertake good faith discussions for the purpose of resolving the dispute and/or the issues giving rise to the claimed default.

(ii) If the dispute and/or the issues giving rise to the claimed default are not resolved by such good faith discussions within thirty (30) days after such notice is provided under foregoing clause (i), then, upon the request of either Party by written notice to the other Party, mediation shall be initiated through the use of a mutually-acceptable neutral mediator not affiliated with either of the Parties, and thereafter the Parties shall proceed in good faith with such mediation for the purpose of resolving the dispute and/or the issues giving rise to the claimed default. If the Parties are unable to agree upon a neutral mediator, then either Party may solicit the Administrative Judge of the Common Pleas Court of Montgomery County, Ohio to appoint the mediator. If the dispute and/or the issues giving rise to the claimed default are not resolved within thirty (30) days after the identification or appointment of the mediator, then the Parties may pursue their other remedies hereunder, in equity or at law. Each Party shall pay its own costs and one-half (1/2) of the mediator's fees and expenses in connection with any such mediation. The Developer acknowledges that before the Parties may proceed with mediation in accordance with this Section 7.3(a), City Council must first authorize and appropriate sufficient monies to pay the City's portion of the cost; provided, however, if the City fails to authorize and appropriate sufficient monies to pay the City's portion of the cost for mediation within sixty (60) days after the appointment of a mediator, the Developer may immediately, and without first being required to proceed to mediation under this Section, pursue its other remedies hereunder in equity or at law.

(b) In the event that the Developer shall create or suffer a Developer Default under this Agreement and the Parties are unable to resolve all issues arising out of such a Developer Default in accordance with the discussion and mediation provisions set forth in Section 7.3(a) above, then, in addition to any other rights or remedies available to the City hereunder, in equity or at law, the City, at its option, shall have the right to cancel and terminate this Agreement by written notice to the Developer.

(c) In the event that the City shall create or suffer a City Default under this Agreement and the Parties are unable to resolve all issues arising out of such a City Default in accordance with the discussion and mediation provisions set forth in Section 7.3(a) above, then, in addition to any other rights or remedies available to the Developer hereunder, in equity or at law, the Developer, at its option, shall have the right to cancel and terminate this Agreement by written notice to the City; whereupon the Declaration shall also be deemed terminated and Developer or City may record a release thereof in the Official Records of Montgomery County.

Section 7.4 Other Rights and Remedies; No Waiver by Delay. The Parties each have the further right to institute any actions or proceedings (including, without limitation, actions for specific performance, injunction or other equitable relief) as it may deem desirable for effectuating the purposes of, and its remedies under, this Agreement; *provided*, that any delay by any Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement will not operate as a waiver of those rights or to deprive it of or limit those rights in any way; nor will any waiver in fact made by either Party with respect to any specific default or breach by any other Party under this Agreement be considered or treated as a waiver of the rights of that Party with respect to any other defaults by the other Party or with respect to the particular default or breach except to the extent specifically waived in writing. It is the further intent of this

provision that no Party should be constrained, so as to avoid the risk of being deprived of or limited in the exercise of any remedy provided in this Agreement because of concepts of waiver, laches, or otherwise, to exercise any remedy at a time when it may still hope otherwise to resolve the problems created by the default involved.

Section 7.5 Force Majeure. Except as otherwise provided herein, no Party will be considered in default in or breach of its obligations to be performed hereunder if delay in the performance of those obligations is due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to, acts of God, acts of terrorism or of the public enemy, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen but not including lack of financing capacity; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of obligations shall be extended for the period of the enforced delay; *provided, however*, that the Party seeking the benefit of the provisions of this Section must, within a reasonable period following commencement of the enforced delay, notify the other Party in writing of the delay and of the cause of the delay and of the duration of the delay or, if a continuing delay and cause, the estimated duration of the delay, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other Parties in writing of the duration of the delay. Delays or failures to perform due to lack of funds shall not be deemed unforeseeable delays.

(END OF ARTICLE VII)

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Assignment. This Agreement may not be assigned without the prior written consent of the non-assigning Party; *provided, however*, that the Developer may without the consent of the City assign its rights and responsibilities under this Agreement to any affiliate of Developer; *provided, further*, any assignment shall not have an effective date earlier than the date title to the parcel upon which such Multifamily Project is to be constructed is/are transferred to the affiliate as evidenced by the recordation of the deed(s) to said parcel(s).

For purposes of this Agreement, an “*affiliate*” of the Developer shall mean any entity controlled by or under common control with the Developer and, “*controlled by*” or “*under common control with*” will refer to the possession, directly or indirectly, of the legal power to direct or cause the direction of the management and policies of an entity, whether through the exercise of, or the ability to exercise, voting power or by contract.

Once the Multifamily Project has been completed, the Developer may assign this Agreement to an unrelated third party, which has the financial resources and expertise to own and operate the Multifamily Project, provided the Developer shall give the City written notice of such assignment within thirty (30) days after the closing of the sale of the Multifamily Project.

Section 8.2 Binding Effect. The provisions of this Agreement are binding upon the successors or permitted assigns of the Parties, including successive successors and assigns. The Parties acknowledge that all matters subject to the approval of City Council will be approved or disapproved in City Council’s sole discretion. All rights, remedies, and interests held, created in, or received by Developer in this Agreement or in any agreement attached to or entered into pursuant to this Agreement, shall, unless the same are specifically and expressly reserved by this

Agreement to Developer, be rights, remedies, and interests automatically transferred by Developer to an affiliate of Developer with, and at such time as, the deed to any parcel upon which Multifamily Project is to be constructed is executed and delivered by Developer; *provided, however*, that the automatic transfer of such rights, remedies, and interests described in this sentence are herein limited to the rights, remedies, and interests as they relate to and affect the Multifamily Project owned by the Developer.

Section 8.3 Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope of the intent of any article, section, subsection, clause, exhibit or appendix of this Agreement.

Section 8.4 Day for Performance. Wherever herein there is a day or time period established for performance and the day or the expiration of the time period is a Saturday, Sunday or legal holiday, then the time for performance will be automatically extended to the next business day.

Section 8.5 Developer Mortgagee Rights. The City hereby acknowledges that, from time to time during the development of the Multifamily Project, the Developer may obtain financing in connection with the Multifamily Project which will be secured in whole or in part by assignments, pledges or mortgages of the Developer's interests in the Property (each a "*Developer Mortgage*"). In connection therewith, the City agrees to and shall cooperate with the Developer to provide to the holder of any such Developer Mortgage (each a "*Developer Mortgagee*") such reasonable factual representations and/or consents regarding this Agreement and/or the Developer's rights hereunder as such Developer Mortgagee may request from time to time. By way of example, such reasonable factual representations and/or consents may take the form of: (a) estoppel certificates certifying that this Agreement is unmodified and in full force and effect (or if

there have been modifications that it is in full force and effect as modified and stating the modifications), that neither the City nor the Developer is in default in the performance of any obligations under this Agreement (or specifying any such default of which the City has knowledge), and certifying as to other facts as reasonably requested by such Developer Mortgagee; and/or (b) consents to the collateral assignment of certain of the Developer's rights under or in respect of this Agreement. Any such requested assurance and/or consent shall be in a form reasonably approved by the City, and the City shall endeavor reasonably to respond to any such request in a prompt and timely manner. The Developer shall pay on behalf of the City any reasonable fees and expenses incurred by the City in connection with any request pursuant to this Section.

Section 8.6 Document Submissions to the City. Except as otherwise required by the City Codified Ordinances, any documents required to be submitted to the City pursuant to this Agreement shall be submitted to the City Manager or such other City department as may be directed by the City Manager.

Section 8.7 Entire Agreement. This Agreement, including the exhibits and the corollary agreements contemplated hereby, embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

Section 8.8 Executed Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It is not necessary in proving this Agreement to produce or account for more than one of those counterparts. The Parties may deliver executed versions of this Agreement and any amendments or addendums hereto by electronic means (e.g., PDF or similar format delivered by electronic mail), and such electronic versions shall be deemed

to be original versions of this Agreement. The Parties agree that this Agreement may be electronically signed by one or more Parties. Any electronic signature used by a Party to sign this Agreement shall be treated the same as handwritten signatures for the purposes of validity, enforceability and admissibility. Without limiting the foregoing, nothing in this Agreement shall be construed to require a Party to sign this Agreement by electronic signature.

Section 8.9 Extent of Covenants; Conflict of Interest; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement are effective to the extent authorized and permitted by applicable law. No member, official or employee of the City shall have a personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement that affects his personal interest or the interests of any corporation, partnership, association or other entity in which he is, directly or indirectly, interested. No covenant, obligation or agreement may be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent, director, member or employee of the City or the Developer, or its successors or permitted assigns, other than in his or her official capacity, and neither the members of the legislative body of the City nor any official executing this Agreement nor any present or future member, officer, agent, director or employee of the Developer, or its successors or permitted assigns, are liable personally under this Agreement or subject to any personal liability or accountability by reason of the execution hereof or by reason of the covenants, obligations or agreements of the City and the Developer contained in this Agreement.

Section 8.10 Governing Law. This Agreement is governed by and is to be construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees and the Developer, its employees

and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio or any appellate court therefrom.

Section 8.11 Limits on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event will the City or the Developer, or its successors or permitted assigns, be liable to each other for punitive, special, consequential or indirect damages of any type and regardless of whether those damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law unless otherwise expressly agreed by the Party against which the damages could be assessed.

Section 8.12 No Third-Party Beneficiary. Except relative to a permitted assignee pursuant to an assignment effected pursuant to Section 8.1, and with respect to the Owners to the extent incorporated by the Declaration, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the Parties, any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Parties hereto, as provided herein. With the exception of the Parties and any assignee effected pursuant to Section 8.1, and with respect to the Owners to the extent incorporated by the Declaration,, it is not intended that any other person or entity shall have standing to enforce, or the right to seek enforcement by suit or otherwise of any provision of this Agreement whatsoever.

Section 8.13 Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder must be in writing and will be deemed sufficiently given if (i) sent by email without

receipt of any return error message and provided that one additional form of written notice is sent within one (1) business day thereafter, or (ii) if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the recipient at the Notice Address, or to another address of which the recipient has previously notified the sender in writing, and the notice will be deemed received upon actual receipt, unless sent by certified mail, in which case the notice will be deemed to have been received when the return receipt is received, signed or refused.

Section 8.14 Recitals and Exhibits. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto and the information contained in the Exhibits hereto are an integral part of this Agreement and as such are incorporated herein by reference.

Section 8.15 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination will not affect any other provision, covenant, obligation or agreement contained herein, each of which will be construed and enforced as if the invalid or unenforceable portion were not contained herein. If any provision, covenant, obligation or agreement contained herein is subject to more than one interpretation, a valid and enforceable interpretation is to be used to make this Agreement effective. An invalidity or unenforceability of any provision of this Agreement will not affect any valid and enforceable application, and each provision, covenant, obligation or agreement will be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 8.16 Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

Acquisition Contingency. City and Developer acknowledge and agree that as of the Effective Date of this Agreement, Developer is the contract purchaser of the Property and in order for Developer to undertake the obligations to be performed by Developer as set forth in this Agreement in relation to the proposed Project, Developer must complete the purchase of the Property and be the owner of the Property. Accordingly, Developer's rights and obligations under this Agreement are contingent upon Developer's acquisition of the Property (the "Acquisition Contingency"). Upon written notice from Developer to the City that Developer will not acquire the Property, this Agreement and all obligations and liabilities hereunder shall terminate and be null and void and of no further force and effect. Upon Developer's acquisition of the Property as evidenced by the written notice to the City and any reasonable evidence of such acquisition as may be requested, the Acquisition Contingency shall be deemed to be satisfied. For purposes of this Agreement the words "effective date of this Agreement" or words of similar import shall mean and refer to the date upon the Developer closes on the purchase of the Property.

(END OF ARTICLE VII – SIGNATURE PAGES TO FOLLOW)

CITY OF HUBER HEIGHTS, OHIO

Title: City Manager

Title: City Attorney

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

- 46 -

- 47 -

FISCAL OFFICER’S CERTIFICATE

The undersigned, Director of Finance of the City of Huber Heights, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 2024 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: _____, 2024

James A. Bell
Director of Finance
City of Huber Heights, Ohio

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

PARCEL I:

EXHIBIT B
DEPICTION OF MULTIFAMILY PROJECT

EXHIBIT C
FORM OF DEVELOPER DECLARATION OF COVENANTS
TAX INCREMENT FINANCING DECLARATION OF COVENANTS

This TAX INCREMENT FINANCING DECLARATION OF COVENANTS (this “*Declaration*”) is made by CONTINENTAL 752 FUND LLC, a Delaware limited liability company having its address at W134N8675 Executive Parkway, Menomonee Falls, WI 53051 (the “*Declarant*”).

W I T N E S S E T H:

WHEREAS, the Declarant has acquired a certain parcel of real property located in the City of Huber Heights, Ohio (the “*City*”), a description of which real property is attached hereto as **ATTACHMENTS A-1 AND A-2** (the “*Parcel*”) and, having acquired such fee simple title by instrument No. _____ recorded in the Official Records of the Office of the Recorder of Montgomery County, Ohio (the “*County Recorder*”), as O.R. _____, Page _____; and

WHEREAS, the Declarant contemplates making private improvements to the referenced Parcels; and

WHEREAS, the City, by its Ordinance No. 20__-O-____ (the “*TIF Ordinance*”), has declared that one hundred percent (100%) of the increase in the assessed value of the Parcel subsequent to the effective date of the TIF Ordinance (such increase hereinafter referred to as the “*Improvement*” as further defined in Ohio Revised Code Sections 5709.40, but which term, as specified in the TIF Ordinance, shall not include the increase in assessed value of any CRA Exempted Improvement (as defined therein) located upon the Parcel for so long and to the extent that such CRA Exempted Improvement is exempt from real property taxation pursuant to the CRA Statute (as defined therein) and the Agreement (defined below) is a public purpose and is exempt from taxation (such exemption referred to herein as the “*TIF Exemption*”) for a period as set forth in the TIF Ordinance, commencing on the effective date and ending on the earlier of (a) thirty (30) years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of Ohio Revised Code Sections 5709.40, 5709.42, 5709.43 and 5709.51 (collectively, the “*TIF Statute*”) and the TIF Ordinance; and

WHEREAS, it is necessary to acknowledge the construction of certain public infrastructure improvements (the “*Existing Public Infrastructure Improvements*”) which have heretofore been designated by the City as benefiting the Parcel and which Declarant agrees will directly benefit the Parcel; and

WHEREAS, the TIF Ordinance provides that the owner of the Parcel makes service payments in lieu of taxes with respect to any Improvement on that Parcel (the “*TIF Payments*”) which TIF Payments will be used to pay costs of the Public Infrastructure Improvements, all pursuant to and in accordance with the TIF Statute and the TIF Ordinance; and

WHEREAS, the Declarant and the City entered into a Development Agreement dated as of _____, 2024 (the “*Agreement*”), a copy of which may be obtained from the office of the City Manager of the City at 6131 Taylorsville Road, Huber Heights, Ohio 45424; and

WHEREAS, the Agreement creates an obligation on the owners of the Parcel containing the Multifamily Project (the “*Multifamily Project Site*”, as defined in the Agreement) to make certain minimum service payments with respect to the Parcel (the “*Minimum Service Payments*”); and

WHEREAS, this Declaration is being made and filed of record with respect to the Parcel comprising the Multifamily Project Site pursuant to Section 2.3 of that Agreement.

NOW, THEREFORE, the Declarant, for itself and its successors and assigns to or of each Parcel (collectively, the “*Owners*” and individually, each an “*Owner*”), hereby declares that the forgoing recitals are incorporated into this Declaration by this reference and that the Parcel and any improvements thereon will be held, developed, encumbered, leased, occupied, improved, built upon, used and conveyed subject to the terms and provisions of this Declaration:

Section 1. Defined Terms. Any terms which are used but not defined herein shall have the meaning as set forth in the Agreement.

Section 2. Provision of Real Property Tax Exemptions Pursuant to CRA Legislation. The Owners agree that the City shall not be required to provide any real property tax exemption with respect to the Parcel under the CRA Legislation until the conditions set forth in Article V of the Agreement are satisfied and for as long as the conditions set forth in Article V of the Agreement are satisfied. The TIF Exemption and the obligation to make TIF Payments are subject and subordinate to any real property tax exemptions granted pursuant to the CRA Legislation.

Section 3. TIF Payments. Each Owner will make the TIF Payments attributable to its period of ownership of the Parcel, all pursuant to and in accordance with the requirements of the TIF Statute, and any subsequent amendments or supplements thereto, and the TIF Ordinance. TIF Payments will be made semiannually to the County Treasurer of Montgomery County, Ohio (or to such Treasurer’s designated agent for collection of the TIF Payments) on or before the due dates for payment of real property taxes for the Parcel, until expiration of the TIF Exemption. Any late payments will bear penalties and interest at the then current rate established under Sections 323.121 and 5703.47 of the Ohio Revised Code or any successor provisions thereto, as the same may be amended from time to time. TIF Payments will be made in accordance with the requirements of the TIF Statute and the TIF Ordinance and, for the Parcel, will be in the same amount as the real property taxes that would have been charged and payable against the Improvement to the Parcel (after credit for any other payments received by the City under Sections 319.302, 321.24, 323.152 and 323.156 of the Ohio Revised Code, or any successor provisions thereto, as the same may be amended from time to time, with such payments referred to herein as the “*Property Tax Rollback Payments*”) if it were not exempt from taxation pursuant to the TIF Exemption, including any penalties and interest. (For avoidance of doubt, the Owner will not be required to make TIF Payments with respect to any increase in assessed value that is exempt from real property taxation pursuant to CRA Legislation because the TIF Exemption is subordinate to the CRA Exemption.) No Owner will, under any circumstances, be required for any tax year to pay both real property taxes and TIF Payments with respect to any portion of the Improvement,

whether pursuant to Section 5709.42 of the Ohio Revised Code or the Agreement; *provided, however*, this shall not preclude payment of any sum otherwise required to be paid under the Agreement.

The Owners acknowledge and agree that the Existing Public Infrastructure Improvements do, and will, directly benefit the Parcel.

Section 4. Minimum Service Payments. In addition to the obligation to make TIF Payments, the Owner of the Parcel agrees to a minimum service payment obligation (the “*Minimum Service Payment Obligation*”) for the Parcel owned by such Owner, pursuant to and in accordance with the Agreement. The Owner of the Parcel agrees that the Minimum Service Payment Obligation is intended to constitute a minimum service payment obligation under Ohio Revised Code Section 5709.91 and shall be supported by a first lien on the Parcel pursuant to Ohio Revised Code Sections 5709.91 and 323.11. The total Minimum Service Payment Obligation due for the Parcel for any calendar year will be equal to the amount set forth in the Agreement; *provided* that the Minimum Service Payment Obligation shall not equal less than zero dollars. The Minimum Service Payment Obligation for the Parcel shall be effective for the term as set forth in the Agreement.

Section 5. Preservation of Exemption. Notwithstanding anything to the contrary set forth in the Agreement, neither City nor any Owner, nor their respective successors, assigns or transferees, shall take any action that may endanger or compromise the status of or cause the revocation of the TIF Exemption.

Section 6. Failure to Make Payments. Should any Owner of the Parcel fail to make any payment required hereunder, such Owner shall pay, in addition to the payments it is required to pay hereunder, such amount as is required to reimburse the City for any and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys’ fees) required by the City to enforce the provisions of the Agreement and this Declaration against that Owner.

Section 7. Provision of Information. The Owner agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated tax incentive review council to enable that tax incentive review council to review and determine annually the compliance of the Owner with the terms of this Declaration during the term of the TIF Exemption for the Parcel.

The Owner further agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status report required by Ohio Revised Code Sections 5709.40(I), as applicable, to the Director of the Ohio Development Services Agency on or before March 31 of each year following any year in which the TIF Exemption for the applicable Parcel remains in effect.

Section 8. Nondiscriminatory Hiring Policy. The Owners agree to comply with the City’s policies adopted pursuant to Ohio Revised Code Section 5709.832 to ensure that recipients of tax exemptions practice nondiscriminatory hiring in its operations. In furtherance of that policy, the Owner agrees that it will not deny any individual employment solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

Section 9. Covenants to Run With the Land. The Owner agrees that each of the covenants contained in this Declaration are covenants running with the land and that they will, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City against the Parcel, as applicable, any improvements thereon and the owner of the Parcel, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to, or in favor of, which these covenants relate. The City has the right in the event of any breach of any covenant herein contained to exercise all of the rights and remedies as set forth in Section 7.3 of the Agreement.

The Owner further agrees that all covenants herein, whether or not these covenants are included by any owner of the Parcel in any deed to that owner's successors and assigns, are binding upon each subsequent owner and are enforceable by the City, and that any future owner of that Parcel, or any successors or assigns of an Owner with respect to the Parcel, will be treated as a Declarant, with respect to that Parcel for all purposes of this Declaration.

The Owner further agrees that the covenants herein will remain in effect so long as the TIF Payments can be collected pursuant to the TIF Statute and the TIF Ordinance and the Minimum Service Payments can be collected pursuant to the Agreement, and in each case, unless otherwise modified or released in writing by the City in a written instrument filed in the Official Records of the County Recorder. At any time when this Declaration is no longer in effect, the City agrees to cooperate with any reasonable request by the Owner(s) to execute (for recording by such Owner(s)) an instrument to evidence this fact.

The Declarant acknowledges that the provisions of Ohio Revised Code Section 5709.91, which specify that the TIF Payments and the Minimum Service Payments will be treated in the same manner as taxes for all purposes of the lien described in Ohio Revised Code Section 323.11 including, but not limited to, the priority of the lien and the collection of TIF Payments and Minimum Service Payments applies to the Parcels and any improvements thereon.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and effective as of _____, 2024.

**CONTINENTAL 752 FUND LLC, a
Delaware limited liability company
BY: Continental Properties Company, Inc., a
Wisconsin corporation, its Manager**

By: _____

Printed: _____

Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

On this _____ day of _____, 2024, before me a Notary Public personally appeared _____, the _____ of Continental Properties Company, Inc., Manager of Continental 752 Fund LLC, a Delaware limited liability company, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of Continental 752 Fund, LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

Notary Public

(Exhibit C Continued)

Attachment A-1

DESCRIPTION OF PARCEL SUBJECT TO DECLARATION

(Exhibit C Continued)

Attachment A-2

DEPICTION OF PARCEL SUBJECT TO DECLARATION

Attachment A-3

**DESCRIPTION OF MULTIFAMILY PARCEL
(SUBJECT TO MINIMUM SERVICE PAYMENTS)**

AI-10015

New Business O.

City Council Meeting

City Manager

Meeting Date: 04/22/2024

Listing Agreements - City-Owned Parcels - Apex Realty

Submitted By: Bryan Chodkowski

Department: Assistant City Manager

Council Committee Review?: Council Work Session

Division: Economic Development

Date(s) of Committee Review: 04/16/2024

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Execute Listing Agreements With Apex Realty For The Sale Of Certain City-Owned Parcels.
(first reading)

Purpose and Background

The City of Huber Heights owns two parcels of land, identified as Montgomery County Parcel Number P70 03909 0027 and Montgomery County Parcel Number P70 01217 0021, which it desires to list for sale in the open market. The City has solicited proposals from Apex Realty for the listing of the properties. The City currently engages Apex Realty on behalf of its interests related to The Meadows Redevelopment Project.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

Exhibit A

Exhibit B

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

AUTHORIZING THE CITY MANAGER TO EXECUTE LISTING AGREEMENTS WITH APEX REALTY FOR THE SALE OF CERTAIN CITY-OWNED PARCELS.

WHEREAS, the City of Huber Heights (the “City”) owns two parcels of land, identified as Montgomery County Parcel Number P70 03909 0027 and Montgomery County Parcel Number P70 01217 0021 (the “Properties”); and

WHEREAS, the City desires to list the Properties for sale in the open market; and

WHEREAS, the City has solicited proposals from Apex Realty for the listing of the Properties.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized to execute a listing agreement with Apex Realty for Montgomery County Parcel Number P70 03909 0027, attached hereto as Exhibit A. The City Manager is further authorized to execute a listing agreement with Apex Realty for Montgomery County Parcel Number P70 01217 0021, attached hereto as Exhibit B. Such authorization is provided in accordance with Section 171.12(a)4 of the Huber Heights Codified Ordinances.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2024;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date



EXHIBIT A - LISTING AGREEMENT FOR SALE

____ City of Huber Heights ____ ("Owner") appoints Apex Commercial Group, LLC ("Apex") as its sole agent and grants to Apex the exclusive right to sell the real property located on Cedar Hill Dr consisting of approx. 33.42± acres and more permanently identified as Montgomery County PPN # P70 03909 0027 known as (the "Property") as provided below (Exhibit A).

1. Term. The term of this agreement will commence on April 3, 2024 and will expire on April 2, 2025.
2. Services. Apex will use its efforts to obtain a satisfactory purchaser and tenant(s) for the Property at a sale price to be determined by Owner and on such other terms as are acceptable to Owner. Apex will negotiate the business terms of any purchase and sale agreement on behalf of Owner and in Owner's best interest, subject to Owner's review and final approval, except as otherwise directed by Owner. Apex will cooperate with other licensed real estate brokers.
3. Marketing. Owner authorizes Apex to advertise and place signage on the Property, subject to Owner's approval of any advertisements and signage. Apex, at its own expense, will place its signs on the Property and will prepare and distribute marketing materials. All advertising whether prepared or issued by Apex or by Owner will identify Apex as Owner's exclusive agent for the Property.
4. Referrals. During the term of this agreement, Owner will refer to Apex all inquiries and offers received by Owner with respect to the Property, regardless of the source of such inquiries or offers.
5. Commission. If, during the term hereof, Owner sells and/or leases any interest in the Property, Owner will pay to Apex a commission in accordance with the attached Schedule of Commissions. Within 10 days after the end of the term, Apex will provide to Owner a list of prospective purchasers to whom the Property was submitted by any party during the term. If a prospective purchaser appearing on the list enters into a purchase and sale agreement or lease within 180 days after the end of the term, and thereafter the sale is closed or the lease is fully executed and delivered, Owner will pay a commission to Apex as provided above. Owner agrees that such 180-day period will be extended for so long as negotiations with a prospective purchaser and tenant are continuing.
6. Outside brokers. If Apex recognizes an outside broker authorized to represent the purchaser in a transaction for which a commission is payable hereunder, Apex will request such broker to agree to accept the outside broker portion of the commission computed and payable in accordance with the annexed Schedule, and if such other broker agrees, Owner will pay Apex the commission computed and payable in accordance with the annexed Schedule out of which Apex will pay to such other broker its agreed upon commission and retain the balance of the commission as Apex's compensation. If the other broker does not so agree, then negotiations will be suspended until such agreement is obtained. The term "outside broker" means a broker other than Steve Ireland and Alex Nikolai.
7. Representation of Purchasers and Tenants. Owner acknowledges and agrees that Apex may represent potential purchasers and consents to such dual representation, provided Apex timely discloses any such dual representation to Owner.
8. Fees and Expenses. If either party commences litigation against the other party to enforce its rights under this agreement, the prevailing party will be entitled to recover from the other party the costs and expenses (including reasonable attorneys' fees) incurred.

9. Authority. Owner represents that it is in fact the owner of the Property and has the right to sell the Property. The individuals signing below represent that they are authorized to sign this agreement on behalf of the entity indicated.

10. Professional Advice. Apex recommends that Owner obtain legal, tax or other professional advice relating to this agreement and the proposed sale of the Property as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans with Disabilities Act. Apex will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and Apex. Owner further agrees that in determining the financial soundness of any prospective purchaser, Owner will rely solely upon Owner's own investigation and evaluation, notwithstanding Apex's assistance in gathering any financial information.

11. OFAC. Each party represents and warrants to the other party that it, and all persons and entities owning (directly or indirectly) an ownership interest in it: (a) are not, and will not become, a person or entity with whom a party is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001, Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; and (b) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.

12. Broker Regulatory or Statutory Provisions. It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing law, 42 U.S.C.A. 3601, as amended, to refuse to sell, transfer, assign, rent, lease, sublease or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services. It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

13. Miscellaneous. This agreement shall be governed by the laws of the State of Ohio, without giving effect to principles of conflicts of law. This agreement constitutes the entire agreement between the parties regarding the subject matter herein, and no amendments, changes or modifications may be made to this agreement without the express written consent of each of the parties. If any term or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or prohibit any other or further exercise of any right hereunder. This agreement shall benefit and be binding upon the parties and their respective successors and assigns. This agreement may be executed and delivered (including by facsimile, "pdf" or other electronic transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Owner: City of Huber Heights

APEX COMMERCIAL GROUP, LLC

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

[Schedule of Commissions Follows]

SCHEDULE OF COMMISSIONS FOR SALE

SALE OR EXCHANGE

Rate: If all or any part of the Property is sold or exchanged, or title is conveyed in any manner, Owner shall pay to Apex at the time designated below a commission as follows:

The Commission shall be 6% of the gross sale price. The gross sale price shall include any and all consideration received but not limited to release of existing liabilities.

Time of Payment: The Commission shall be paid in full at the closing of the sale or exchange of the Property, or if there is no closing, at the transfer of the title to the Purchaser; provided, however, if the transaction involves an installment sales contract, the Commission shall be paid upon execution of the contract by Owner.

Computation of Total Sales Price: The commission shall be computed in accordance with the above rates based upon the gross sales price, which shall include any mortgages, loans or other obligations of Owner which may be assumed by purchaser or which purchaser takes title "subject to," and any purchase money loans or mortgages taken back by Owner.

Purchase Option: If Owner grants a purchase option, Apex will be paid a commission at the above rate on the option price as and when amounts are payable for the option (and for extensions thereof). Upon closing of the sale, Apex will be paid a commission at the above rate on the total sales price (excluding any amount paid for the option and applied to the sales price).

Exhibit A





EXHIBIT B - LISTING AGREEMENT FOR SALE

____ City of Huber Heights ____ ("Owner") appoints Apex Commercial Group, LLC ("Apex") as its sole agent and grants to Apex the exclusive right to sell the real property located on Center Point 70 Blvd consisting of approx. 28.4± acres and more permanently identified as Montgomery County PPN # P70 01217 0021 known as (the "Property") as provided below (Exhibit A).

1. Term. The term of this agreement will commence on April 3, 2024 and will expire on April 2, 2025.
2. Services. Apex will use its efforts to obtain a satisfactory purchaser and tenant(s) for the Property at a sale price to be determined by Owner and on such other terms as are acceptable to Owner. Apex will negotiate the business terms of any purchase and sale agreement on behalf of Owner and in Owner's best interest, subject to Owner's review and final approval, except as otherwise directed by Owner. Apex will cooperate with other licensed real estate brokers.
3. Marketing. Owner authorizes Apex to advertise and place signage on the Property, subject to Owner's approval of any advertisements and signage. Apex, at its own expense, will place its signs on the Property and will prepare and distribute marketing materials. All advertising whether prepared or issued by Apex or by Owner will identify Apex as Owner's exclusive agent for the Property.
4. Referrals. During the term of this agreement, Owner will refer to Apex all inquiries and offers received by Owner with respect to the Property, regardless of the source of such inquiries or offers.
5. Commission. If, during the term hereof, Owner sells and/or leases any interest in the Property, Owner will pay to Apex a commission in accordance with the attached Schedule of Commissions. Within 10 days after the end of the term, Apex will provide to Owner a list of prospective purchasers to whom the Property was submitted by any party during the term. If a prospective purchaser appearing on the list enters into a purchase and sale agreement or lease within 180 days after the end of the term, and thereafter the sale is closed or the lease is fully executed and delivered, Owner will pay a commission to Apex as provided above. Owner agrees that such 180-day period will be extended for so long as negotiations with a prospective purchaser and tenant are continuing.
6. Outside brokers. If Apex recognizes an outside broker authorized to represent the purchaser in a transaction for which a commission is payable hereunder, Apex will request such broker to agree to accept the outside broker portion of the commission computed and payable in accordance with the annexed Schedule, and if such other broker agrees, Owner will pay Apex the commission computed and payable in accordance with the annexed Schedule out of which Apex will pay to such other broker its agreed upon commission and retain the balance of the commission as Apex's compensation. If the other broker does not so agree, then negotiations will be suspended until such agreement is obtained. The term "outside broker" means a broker other than Steve Ireland and Alex Nikolai.
7. Representation of Purchasers and Tenants. Owner acknowledges and agrees that Apex may represent potential purchasers and consents to such dual representation, provided Apex timely discloses any such dual representation to Owner.
8. Fees and Expenses. If either party commences litigation against the other party to enforce its rights under this agreement, the prevailing party will be entitled to recover from the other party the costs and expenses (including reasonable attorneys' fees) incurred.

9. Authority. Owner represents that it is in fact the owner of the Property and has the right to sell the Property. The individuals signing below represent that they are authorized to sign this agreement on behalf of the entity indicated.

10. Professional Advice. Apex recommends that Owner obtain legal, tax or other professional advice relating to this agreement and the proposed sale of the Property as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans with Disabilities Act. Apex will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and Apex. Owner further agrees that in determining the financial soundness of any prospective purchaser, Owner will rely solely upon Owner's own investigation and evaluation, notwithstanding Apex's assistance in gathering any financial information.

11. OFAC. Each party represents and warrants to the other party that it, and all persons and entities owning (directly or indirectly) an ownership interest in it: (a) are not, and will not become, a person or entity with whom a party is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001, Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; and (b) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.

12. Broker Regulatory or Statutory Provisions. It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing law, 42 U.S.C.A. 3601, as amended, to refuse to sell, transfer, assign, rent, lease, sublease or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services. It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

13. Miscellaneous. This agreement shall be governed by the laws of the State of Ohio, without giving effect to principles of conflicts of law. This agreement constitutes the entire agreement between the parties regarding the subject matter herein, and no amendments, changes or modifications may be made to this agreement without the express written consent of each of the parties. If any term or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or prohibit any other or further exercise of any right hereunder. This agreement shall benefit and be binding upon the parties and their respective successors and assigns. This agreement may be executed and delivered (including by facsimile, "pdf" or other electronic transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Owner: City of Huber Heights

APEX COMMERCIAL GROUP, LLC

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

[Schedule of Commissions Follows]

SCHEDULE OF COMMISSIONS FOR SALE

SALE OR EXCHANGE

Rate: If all or any part of the Property is sold or exchanged, or title is conveyed in any manner, Owner shall pay to Apex at the time designated below a commission as follows:

The Commission shall be 6% of the gross sale price. The gross sale price shall include any and all consideration received but not limited to release of existing liabilities.

Time of Payment: The Commission shall be paid in full at the closing of the sale or exchange of the Property, or if there is no closing, at the transfer of the title to the Purchaser; provided, however, if the transaction involves an installment sales contract, the Commission shall be paid upon execution of the contract by Owner.

Computation of Total Sales Price: The commission shall be computed in accordance with the above rates based upon the gross sales price, which shall include any mortgages, loans or other obligations of Owner which may be assumed by purchaser or which purchaser takes title "subject to," and any purchase money loans or mortgages taken back by Owner.

Purchase Option: If Owner grants a purchase option, Apex will be paid a commission at the above rate on the option price as and when amounts are payable for the option (and for extensions thereof). Upon closing of the sale, Apex will be paid a commission at the above rate on the total sales price (excluding any amount paid for the option and applied to the sales price).

Exhibit A

