

ORDINANCE NO. 92-15 – EXHIBIT A

AGREEMENT TO ADVANCE DESIGN COSTS – PROJECT K

THIS AGREEMENT TO ADVANCE DESIGN COSTS – PROJECT K (the "Agreement") is entered into as of the ___ day of July, 2015 by and between the CITY OF AVON, an Ohio municipal corporation ("City"), and NWQ JAYCOX/I-90 LLC, an Ohio limited liability company ("Developer"), at Avon, Lorain County, Ohio.

W I T N E S S E T H:

WHEREAS, Developer is the owner of approximately 198 acres of land, in the aggregate, as depicted on Exhibit A, attached hereto and made a part hereof (the "Property"), located in the City and fronting on the north and south side of Chester Road;

WHEREAS, Developer intends to convey to Menard, Inc., a Wisconsin corporation, fee simple title to approximately 22.35 acres of the Property, as depicted on Exhibit A hereto, for the construction and operation thereon of a proposed Menard's store, and to convey to Cabela's Wholesale, Inc., a Nebraska corporation, fee simple title to approximately 13.33 acres of the Property, as depicted on Exhibit A hereto, for the construction and operation thereon of a proposed Cabela's store (the proposed Menard's store and the proposed Cabela's store being hereinafter collectively referred to as the "Developer Projects");

WHEREAS, in connection with the Developer Projects, Developer intends to cause the reconstruction of approximately 800 lineal feet of Chester Road, from a two-lane to a five-lane roadway (herein referred to as "Project J"), at the location depicted on Exhibit A hereto;

WHEREAS, concurrently with the construction of Project J, City and Developer desire to cause the reconstruction by City of approximately 3,000 additional lineal feet of Chester Road, from a two-lane to a five-lane roadway (herein referred to as "Project K"), extending from the east property lines of the Developer Projects to the Jaycox Road intersection, at the location depicted on Exhibit A hereto;

WHEREAS, Developer intended that Project J and Project K would consist of a widening of the affected portions of Chester Road from two lanes to three lanes, but City has requested that Project J and Project K include the fourth and fifth lanes;

WHEREAS, pursuant to a Development Agreement to be entered into by and between City and Developer, (i) Developer will agree to cause Bramhall Engineering & Surveying Company, Inc., an Ohio corporation ("Bramhall"), to provide certain professional services in connection with the design and construction of Project J, (ii) City will agree to reimburse Developer for the incremental costs incurred by Developer in causing Bramhall to prepare plans and specifications for the two (2) outside traffic lanes of Project J (i.e. the 4th and 5th lanes of Project J), (iii) Developer will agree to cause the construction of Project J to be completed, and (iv) City will agree to reimburse Developer for the incremental costs incurred by Developer in causing the two (2) outside traffic lanes of Project J (i.e. the 4th and 5th lanes of Project J, as described in Exhibit E hereto) to be constructed;

WHEREAS, City has agreed to engage Chagrin Valley Engineering, Ltd., an Ohio limited liability company ("CVE"), to provide certain professional services in connection with Project K;

WHEREAS, Developer has agreed to advance to City the costs and expenses (collectively, the "Design Costs") incurred by City to engage CVE to prepare plans and specifications for Project K (the "Design Services");

WHEREAS, Project K is to be funded, in part, by the proceeds of special assessments, as hereinafter provided, but excluding, however, the incremental costs to construct the two (2) outside traffic lanes of Project K (i.e. the 4th and 5th lanes of Project K, as described in Exhibit E hereto), which are to be funded by City;

WHEREAS, it is anticipated that the costs and expenses to be incurred by City in connection with Project K, including without limitation right-of-way acquisition costs, infrastructure installation and relocation costs, the Design Costs, and the costs of constructing Project K, but excluding, however, the costs and expenses to be incurred by City in connection with the construction of the two (2) outside traffic lanes (i.e. the fourth and fifth lanes of Project K, as described in Exhibit E hereto) and curb and gutter (the "Excluded Costs"), will be paid, in part, by the proceeds of general obligation bonds to be issued by City (the "Chester Road Bonds"), the repayment of which will be funded, in part, by special assessments to be levied and collected by City against the Property and other land abutting, adjacent or contiguous to Project K (other than the Developer Projects) which would be specially benefited by Project K, pursuant to ordinances enacted by City (the "Chester Road Special Assessments"); and

WHEREAS, City and Developer desire to execute this Agreement to memorialize their mutual understanding and agreement, and set forth their rights and obligations, with respect to the Design Services and payment of the Design Costs.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which City and Developer mutually acknowledge, City and Developer agree as follows:

1. Scope of Project K and Design Services. The scope of Project K shall be substantially as set forth in Exhibit B, attached hereto and made a part hereof. The scope of the Design Services to be provided by CVE with respect to Project K, and the schedule for performing various elements of the Design Services, are set forth in Exhibit C, attached hereto and made a part hereof.

2. Monthly Advances. City shall require CVE to submit to City monthly statements for the Design Services rendered and reimbursable expenses incurred by CVE with respect to Project K. City shall review each monthly statement and, provided City approves such statement, shall submit such statement to Developer, for payment to City. CVE shall be paid in accordance with the percentage of completion of the Design Services listed and schedule of values set forth in Exhibit C to this Agreement. Upon the request of Developer, City shall require CVE to provide reasonable documentation substantiating the percentage of completion set forth in any statement and any reimbursable expenses, and City shall provide a copy of such documentation to Developer. For purposes of this Agreement, the term "reimbursable expenses" shall mean and be limited to the actual out-of-pocket expenses paid or incurred by CVE for

document reproduction, travel expenses (but only when pre-approved by City and Developer) and messenger or overnight delivery services. Developer shall make payments to City in response to CVE's monthly statements within thirty (30) days following Developer's receipt of CVE's statement therefore, as approved by City, in writing. In the event this Agreement is terminated by Developer, CVE shall be paid for Design Services rendered and reimbursable expenses incurred through the date of termination. Any and all payments made by Developer pursuant to this Agreement shall be deemed to be an advance to and on behalf of City, and shall be reimbursed by City pursuant to the terms and conditions of Section 3 of this Agreement. Notwithstanding anything to the contrary contained herein, in no event shall the Design Costs to be advanced to City by Developer pursuant to this Agreement exceed the sum of Two Hundred Sixty Five Thousand Dollars (\$265,000), in the aggregate (the "Maximum Amount"), without the prior written approval of the Developer, in its sole and absolute discretion.

3. Reimbursement by City. Developer shall be obligated to advance the Design Costs, up to the Maximum Amount, until such time as construction of Project K commences pursuant to contracts awarded by City (the collectively, the "Contracts"). Prior to the date City awards the Contracts, Developer shall submit a petition to City for voluntary assessment of the Chester Road Special Assessments (the "Voluntary Petition") with respect to the Property and other land abutting, adjacent or contiguous to Project K which would be specially benefited by Project K, as identified on Exhibit D, attached hereto and made a part hereof. Following the receipt by City of the Voluntary Petition and subject to the passage of appropriate City legislation, City shall (i) issue short term promissory notes and borrow funds required to fund construction of Project K, other than the Excluded Costs (which promissory notes will be repaid by the proceeds of the Chester Road Bonds, at such time as the Chester Road Bonds are issued and the Chester Road Special Assessments are levied by City), including all costs and expenses to be incurred by City in connection therewith, and (ii) reimburse Developer, without interest, from the proceeds of the short term promissory notes, for all Design Costs advanced to City by Developer pursuant to this Agreement, which reimbursement shall occur by not later than December 31, 2016; provided, however, that if construction of Project K has not commenced by June 30, 2016, other than for reasons of force majeure, environmental issues or other causes outside the reasonable control of City, the Design Costs advanced by Developer to City pursuant to this Agreement shall be reimbursed to Developer following not less than thirty (30) days written notice from Developer to City.

4. Changes or Amendments. The Design Services are based upon, and subject to, the assumptions attached hereto and made a part hereof as Exhibit E. The parties hereto acknowledge and agree that a change in any of the assumptions set forth in Exhibit E may necessitate a change in the Design Services. In the event that either the scope of Project K or the scope of the Design Services requires modification(s), City shall promptly notify Developer of the need for such modification(s) and shall provide Developer with a summary of the nature and necessity of such modification(s). Within five days of receipt of such notice, Developer shall provide City with a written consent to such modification(s) or written notice of its intent to terminate this Agreement. In the event Developer chooses to terminate this Agreement, Developer shall, in accordance with Section 6, advance to City the costs and expenses incurred by City with respect to Design Services performed by CVE prior to the effective date of such termination.

5. Documents and Meetings. City shall provide to Developer a copy of all correspondence, reports and documents related to the Design Services. City shall notify Developer of all meetings related to the Design Services not less than seven (7) days prior to each meeting. Such notification shall include the time, place and agenda of such meeting.

6. Termination. This Agreement may be terminated by Developer without cause and for its convenience upon not less than ten (10) days' prior written notice to City. In the event of a termination by Developer, Developer shall advance to City the costs and expenses incurred by City with respect to the Design Services performed by CVE prior to the effective date of such termination, excluding lost profits on unperformed Design Services or any other compensation for Design Services not performed as of the effective date of such termination.

7. No Liability for Services. Developer shall have no liability to City and City shall have no liability to Developer for the quality, accuracy, completeness or timeliness of the Design Services provided by CVE. CVE shall be solely responsible for performing the Design Services. Developer shall have no liability to CVE for the accuracy, completeness or timeliness of any information City provides or is required to provide to CVE in connection with the Design Services. Developer shall have no liability to City or CVE for the failure of either City or CVE to fulfill any obligation or duty imposed on either of them in connection with the Design Services, it being acknowledged and agreed that the Developer's only obligation under this Agreement shall be to make the advances required pursuant to Section 2 of this Agreement.

8. Notices. Any notice that may be or is required to be given under this Agreement shall be in writing, and shall be delivered by FedEx overnight, other similar overnight courier, or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party receiving such notice at the following addresses:

If to Developer, to: NWQ Jaycox/I-90 LLC
 c/o The Richard E. Jacobs Group LLC
 25425 Center Ridge Road
 Cleveland, Ohio 44145-4122
 Attn: James F. Epple
 p: 440.871.4800
 f: 440-808-6901

with a required copy to: NWQ Jaycox/I-90 LLC
 c/o The Richard E. Jacobs Group LLC
 25425 Center Ridge Road
 Cleveland, Ohio 44145-4122
 Attn: General Counsel
 p: 440.871.4800
 f: 440-808-6903

If to City, to: City of Avon
36080 Chester Road
Avon, Ohio 44011-1099
Attn: Honorable Bryan K. Jensen, Mayor
p: (440) 937-7805
f: (440) 937-7824

with a required copy to: John A. Gasior
Director of Law, City of Avon
36815 Detroit Road
Avon, Ohio 44011
p: 440.934.7676
f: 440.934-7677

9. Disputes; Attorneys Fees. In the event of any dispute between the parties hereto with respect to this Agreement, each party shall abide by the dispute resolution procedures set forth in Exhibit F, attached hereto and made a part hereof.

10. Miscellaneous. This Agreement shall be binding on the respective successors and assigns of the parties hereto; provided, however, that neither party shall assign this Agreement without the prior written consent of the other party. Modifications of this Agreement shall be effective only if in writing and executed by each of the parties to this Agreement. This Agreement may be executed in one or more counterparts and shall be effective when at least one counterpart has been executed by each party thereto, and each of which counterparts shall, collectively, constitute one duplicate original. This Agreement shall be governed and construed according to the laws of the State of Ohio.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF AVON, an Ohio municipal corporation

By: _____
Name: _____
Title: _____

NWQ JAYCOX/I-90 LLC, an Ohio limited liability company

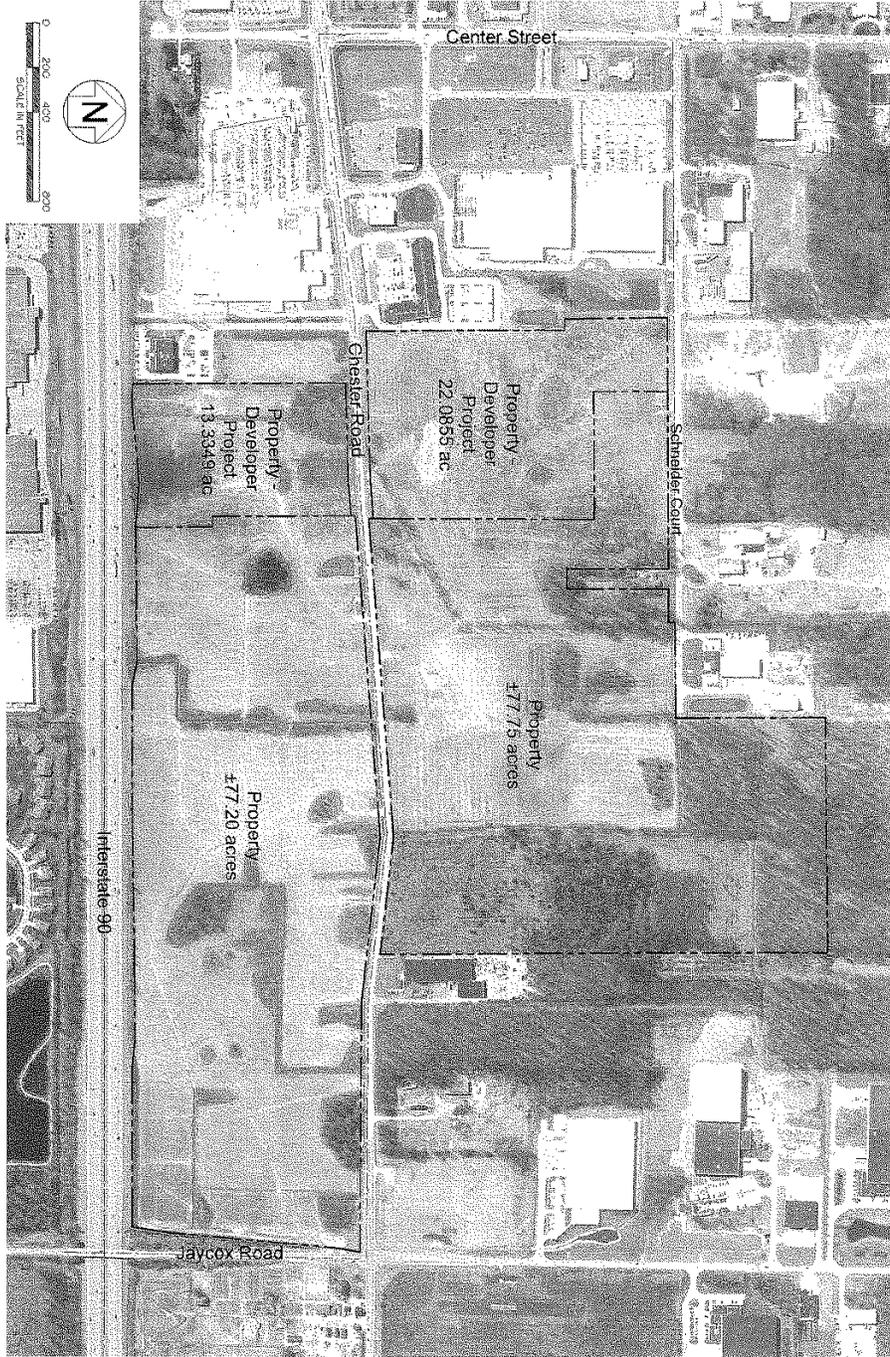
By: _____
Name: _____
Title: _____

Approved as to form and legal sufficiency.

John A. Gasior, Director of Law

EXHIBIT A

Site Plan of Property



<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Exhibit A</p>	<p style="font-size: small;"> THE RICHARD E. JACOBS GROUP 25122 Center Ridge Road, Cleveland, Ohio 44145-4152 Phone: 440.871.1630 </p>	<p>Exhibit A to Agreement to Advance Design Costs "Property"</p>	<p>- Avon, Ohio</p>
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EXHIBIT B

Scope of Project K



CHESTER ROAD RECONSTRUCTION (EAST OF MENARD'S TO JAYCOX ROAD) INITIAL ESTIMATE OF PROJECT COST

Initial View of Project Scope:
Reconstruct and widen Chester Road between the east Menard's property line and Jaycox Road intersection (2,800ft+/-)
Replace water main; Install sanitary sewer; Replace ditches with storm sewer systems
Replace drive culverts and one culvert crossing Chester
Two-Way Traffic is to be maintained at all times throughout construction

ITEM	ITEM DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	TOTAL
1	CLEARING & GRUBBING	LUMP	LUMP	\$10,000.00	\$10,000.00
2	PAVEMENT REMOVED	7470	S.Y.	\$7.00	\$52,290.00
3	EXCAVATION	3400	C.Y.	\$12.00	\$40,800.00
4	SUBGRADE COMPACTION	12450	S.Y.	\$1.50	\$18,675.00
5	LINEAR GRADING, AS PER PLAN	1.1	MILE	\$20,000.00	\$22,000.00
6	ODOT 301 ASPHALT CONCRETE BASE	2025	C.Y.	\$125.00	\$253,125.00
7	ODOT 304 AGGREGATE BASE	2075	C.Y.	\$45.00	\$93,375.00
8	ODOT 407 TACK COAT	1245	GALLON	\$2.00	\$2,490.00
9	ODOT 407 TACK COAT FOR INTERMEDIATE COURSE	1245	GALLON	\$2.00	\$2,490.00
10	ODOT 411 AGGREGATE SHOULDER	320	C.Y.	\$50.00	\$16,000.00
11	ODOT 448 ASPHALT INTERMEDIATE COURSE	575	C.Y.	\$150.00	\$86,250.00
12	ODOT 448 ASPHALT SURFACE COURSE	410	C.Y.	\$175.00	\$71,750.00
13	6" UNDERDRAINS WITH FABRIC WRAP	5600	L.F.	\$7.00	\$39,200.00
14	ASPHALT DRIVE APRON	3600	S.F.	\$4.00	\$14,400.00
15	BASE STABILIZATION, #2 AGGREGATE	520	C.Y.	\$40.00	\$20,800.00
16	BASE STABILIZATION, #4 AGGREGATE	520	C.Y.	\$40.00	\$20,800.00
17	STORM SEWER REMOVED, 24" AND UNDER	310	L.F.	\$10.00	\$3,100.00
18	8" STORM SEWER (CONTINGENCY)	75	L.F.	\$40.00	\$3,000.00
19	12" STORM SEWER (CROSSOVERS)	600	L.F.	\$60.00	\$36,000.00
20	18" STORM SEWER (DRIVE CULVERTS)	1200	L.F.	\$65.00	\$78,000.00
21	24" STORM SEWER (CULVERT REPLACEMENT)	800	L.F.	\$70.00	\$56,000.00
22	48" STORM SEWER (CREEK ENCL / CULVERT REPL)	600	L.F.	\$175.00	\$105,000.00
23	HEADWALL HW-1.1	2	EACH	\$2,000.00	\$4,000.00
24	STORM MANHOLE	10	EACH	\$2,500.00	\$25,000.00
25	2-2-B CATCH BASIN	20	EACH	\$1,200.00	\$24,000.00
26	8" SANITARY SEWER	3200	L.F.	\$70.00	\$224,000.00
27	SANITARY MANHOLE	11	EACH	\$3,000.00	\$33,000.00
28	SANITARY LATERAL	10	EACH	\$2,500.00	\$25,000.00
29	12" WATER MAIN (CLASS 52 DUCTILE IRON)	3200	L.F.	\$115.00	\$368,000.00
30	12" LINE VALVE	2	EACH	\$2,000.00	\$4,000.00
31	6" HYDRANT AND VALVE ASSEMBLY	10	EACH	\$3,000.00	\$30,000.00
32	8" WATER CONNECTION	1	EACH	\$4,000.00	\$4,000.00
33	FIRE HYDRANT REMOVED	10	EACH	\$250.00	\$2,500.00
34	ABANDON EX WATER MAIN	LUMP	LUMP	\$5,000.00	\$5,000.00
35	MISCELLANEOUS METAL	2000	LBS	\$1.00	\$2,000.00
36	MONUMENT BOX ASSEMBLY	3	EACH	\$750.00	\$2,250.00
37	MAINTAINING TRAFFIC	LUMP	LUMP	\$60,000.00	\$60,000.00
38	WORK ZONE PAVEMENT MARKINGS	LUMP	LUMP	\$10,000.00	\$10,000.00
39	PORTABLE CHANGEABLE MESSAGE SIGN	12	SIGN MONTH	\$1,000.00	\$12,000.00
40	PAVEMENT FOR MAINTAINING TRAFFIC, CLASS A	3200	S.Y.	\$45.00	\$144,000.00
41	PORTABLE BARRIER, 32"	3200	L.F.	\$11.00	\$35,200.00
42	SIGNING	LUMP	LUMP	\$10,000.00	\$10,000.00
43	PAVEMENT MARKING	LUMP	LUMP	\$10,000.00	\$10,000.00

22999 Forbes Road • Suite B • Cleveland, Ohio 44146-5667 • Phone 440.439.1999 • Fax 440.439.1969 • www.cveilimited.com



**CHESTER ROAD RECONSTRUCTION (EAST OF MENARD'S TO JAYCOX ROAD)
INITIAL ESTIMATE OF PROJECT COST**

Initial View of Project Scope:

Reconstruct and widen Chester Road between the east Menard's property line and Jaycox Road intersection (2,800ft+/-)
 Replace water main; Install sanitary sewer; Replace ditches with storm sewer systems
 Replace drive culverts and one culvert crossing Chester
 Two-Way Traffic is to be maintained at all times throughout construction

44	TOPSOIL, SEEDING AND MULCHING	12500	S Y	\$3 00	\$37,500.00
45	EROSION CONTROL INSPECTION FEE ALLOWANCE	LUMP	LUMP	\$2,500.00	\$2,500.00
46	CONSTRUCTION STAKING	LUMP	LUMP	\$5,000.00	\$5,000.00
47	AS-BUILTS	LUMP	LUMP	\$3,000.00	\$3,000.00

Subtotal of Construction Costs	\$2,127,495.00
15% Contingency	\$319,000.00
Surveying (Estimated)	\$30,000.00
Soil Borings (Estimated)	\$8,500.00
Environmental Services (Estimated)	\$40,000.00
Engineering (Based on Construction Value)	\$163,500.00
Inspection (Estimated @ 6%)	\$128,000.00

TOTAL PRELIMINARY ESTIMATE OF PROJECT COST ** \$2,816,495.00

****Notes:**

- 1) The costs shown in this estimate represent an initial estimate of project costs prepared in good faith and with reasonable care. Chagrin Valley Engineering, Ltd. has no control over the costs of construction labor, materials, or equipment, nor over competitive bidding.
- 2) The above estimate was prepared without the benefit of significant preliminary site investigations and only a concept view of the project scope. As such this estimate is subject to revision as the project scope and design details are refined via the engineering design process.
- 3) Costs for engineering services will be based upon the final cost of construction. Costs for supplemental services such as surveying, environmental services, soil borings etc. will be charged on an hourly rate basis.
- 4) The estimate above does not address any costs for the movement of existing electric and gas facilities within the project area. Those costs will be determined during the design process based on communications with the affected utility companies.
- 5) The estimate above does not include any costs for acquisition of right-of-way.

EXHIBIT C

Scope of and Schedule for Design Services

- Chagrin Valley Engineering, Ltd. ("CVE") shall provide primary Project Engineering Services necessary for design of the proposed road reconstruction as described in Exhibit B. CVE shall identify any civil engineering subconsultants to be engaged as part of Project K design.
- CVE shall provide primary Project Surveying Services necessary for design of the proposed road reconstruction as described in Exhibit B. CVE shall identify any surveying subconsultants to be engaged as part of the Project K design.
- In coordination with the proposed Developer Projects, CVE shall retain O'Brien & Gere and/or Terracon as subconsultant for Environmental Services as described in Exhibit B.
- In coordination with the Developer Projects, CVE shall retain The David V. Lewin Corp. and/or Terracon as subconsultant for Geotechnical Services (Soil Borings) as described in Exhibit B.
- In coordination with the proposed Developer Projects and existing Jaycox Road improvements, CVE shall retain TMS Engineering for any Traffic Engineering subconsultant services, as required.
- The proposed Project K schedule is as follows:
 - 30% Design – base mapping, typical section, preliminary geometric plan and profile, drainage studies, environmental studies, geotechnical studies – June, 2015
 - 60% Design – roadway engineering, utility engineering, drainage design, environmental engineering – August, 2015
 - 90% Design – final engineering, right of way – October, 2015
 - 100% Design – bidding documents – November, 2015
 - Private utility relocation – January-June, 2016
 - Public utility installation and relocations – March-August, 2016
 - Road reconstruction – May-October, 2016

EXHIBIT D

Site Plan Depicting Land to be Subject to Chester Road Special Assessments

[to be inserted]

EXHIBIT E

Assumptions

- The proposed road reconstruction (Project K) will be coordinated with existing intersection improvements at Jaycox Road on the east and with the proposed Developer Projects (Cabela's and Menards) roadway improvements on the west.
- The proposed road reconstruction right of way will be 100' total width, as defined by the City of Avon Typical Arterial Roadway Section.
- The proposed road reconstruction design section will be based on the City of Avon Typical Arterial Roadway Section, with an added continuous center turning lane for a build-out of a 5-lane section, including construction of the outside traffic lane on each side, curb and gutter, and sidewalks.
- Utility installations and relocations will be substantially as shown on the Typical Section, with easements adjacent to the right of way for private utilities. Project K will include relocation of the public watermain. Project K will include extension of a public sanitary sewer from Jaycox Road west to the eastern boundaries of the Developer Projects, and will coordinate respective modification of the City sewer district map boundary. Project K will coordinate relocation of private utilities.
- The City of Avon will support Project K in communications with other stakeholders, agencies, and utility companies.

EXHIBIT F

Dispute Resolution

In the event a dispute arises between City and Developer (each is individually referred to as a “party” and both are collectively referred to as “parties” herein) under this Agreement, or regarding the application or interpretation of any of the terms or conditions of this Agreement, or regarding the Design Services provided by CVE, the aggrieved party shall promptly notify the other party to this Agreement of such dispute in writing. If the parties fail to resolve such dispute within twenty (20) days after receipt of such notice, either party may, within five (5) days thereafter, commence non-binding mediation administered by the American Arbitration Association (“AAA”) in accordance with its Construction Mediation Rules then in effect by written request to the other party and AAA, with each party to bear its own costs and attorneys’ fees, and the parties shall share equally in the cost of the mediator and any costs of administering the mediation. In the event that the mediation is not timely commenced or is unsuccessful, the aggrieved party may elect to litigate its dispute with the other party. All disputes shall be governed by the laws of the State of Ohio, without regard to conflicts of laws principles, and the jurisdiction and venue for litigation between the parties shall be solely and exclusively in Lorain County, Ohio, or the United States District Court for the Northern District of Ohio, Eastern Division, and a non-defaulting party shall be entitled to such remedies as may be available to it, at law or in equity, including without limitation, specific performance. In the event that either party hereto engages one or more attorneys to enforce any provision of this Agreement or to collect damages for default or breach of this Agreement, or to pursue claims in litigation, the prevailing party in any such action shall be entitled to recover from the other party such reasonable attorneys’ fees and costs of collection as the prevailing party may expend or incur with respect thereto. In the event that a settlement is reached between the parties before a final decision is rendered in any such litigation, then neither party shall be entitled to recover its attorneys’ fees or costs from the other and neither party shall be responsible for the other party’s attorneys’ fees or costs, unless otherwise agreed by the parties in writing.