

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH PULTE HOMES OF OHIO, LLC, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Avon Lake desires to enter into a Memorandum of Understanding with Pulte Homes of Ohio, LLC, for a traffic study to determine if a traffic signal is warranted at the following intersections: (i) Midship Drive, Moorewood Avenue, and Walker Road, and (ii) Coastal Drive, Cedarwood Road, and Walker Road; and

WHEREAS, Pulte Homes of Ohio, LLC received a proposal from GPD Group to complete the traffic study.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor is hereby authorized to enter into a Memorandum of Understanding with the Pulte Homes of Ohio, LLC. (Exhibit A).

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of fulfilling the terms of the Memorandum of Understanding, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

PASSED: 12/18/2023

/s/ Martin E. O'Donnell

President of Council

POSTED: 12/22/2023

APPROVED: 12/19/2023

ATTEST: /s/ Valerie E. Rosmarin
Clerk of Council

/s/ Gregory J. Zilka
Mayor

MEMORANDUM OF UNDERSTANDING
(Traffic Improvements)

This MEMORANDUM OF UNDERSTANDING (the “**MOU**”) is entered into between **PULTE HOMES OF OHIO LLC**, a Michigan limited liability company (“**Pulte**”) and the **CITY OF AVON LAKE, OHIO**, an Ohio municipal corporation (the “**City**”).

WHEREAS, Pulte is the developer of approximately 57 acres of real property located along the southern side of Walker Road in Avon Lake, Ohio, and which is commonly known as the “Port West Subdivision” (the “**Property**”);

WHEREAS, Pulte is developing the Property as a residential subdivision containing forty-four (44) single-family style homes and ninety-nine (99) cluster style homes (the “**Intended Development**”);

WHEREAS, Pulte intends to develop the Intended Development in five (5) phases (each being a “**Phase**”);

WHEREAS, on May 3, 2016, the City approved the general layout and development plan for the Intended Development (the “**General Development Plan**”), which was amended and re-approved by the City on June 1, 2021 (the “**Amended General Development Plan**”);

WHEREAS, in the process of Pulte obtaining approval of the Amended General Development Plan, there were discussions by the City about traffic increases on Walker Road caused by the Intended Development and other development on or near Walker Road;

WHEREAS, in the process of Pulte obtaining City approval of the specific engineering plans for the fourth (4th) Phase of the Intended Development, the Police Department of the City stated its opinion that a traffic signal is needed due to potential impacts of the fourth (4th) phase of the Intended Development (the “**Traffic Signal**”);

WHEREAS, in response to the Police Department’s opinion regarding the Traffic Signal and various discussions, the City has stated that, prior to Pulte obtaining approval of the specific engineering plans for the fifth (5th) Phase of the Intended Development from the City, Pulte shall conduct a traffic study to determine if the Traffic Signal is warranted; and

WHEREAS, Pulte and the City desire to enter into this MOU to set forth the understanding and obligations of the parties with respect to the possible Traffic Improvements.

NOW, THEREFORE, in consideration of mutual promises, covenants, and agreements, the City and Pulte agree as follows:

1. Pulte has obtained a proposal from GPD Group to complete a traffic study as it pertains to the necessity for the Traffic Signal (the “**Traffic Study**”). The proposal for the Traffic Study is attached hereto and incorporated herein as Exhibit A. Based upon the proposal, Pulte shall engage GPD Group to complete the Traffic Study.

The Traffic Study will analyze if the Traffic Signal is warranted due to the Intended Development. The Traffic Study shall be limited to the necessity of the Traffic Signal at the following intersections: (i) Midship Drive, Moorewood Avenue and Walker Road, and (ii) Coastal Drive, Cedarwood Road and Walker Road.

The Traffic Study shall be limited to the necessity of the Traffic Signal. The Traffic Study shall be completed at a time when nearby roadways are open for use so that a true impact of traffic can be ascertained. Initially, Pulte shall pay for the Traffic Study. Upon completion, a copy of the Traffic Study shall be provided to the City for review and approval of the methodology and findings contained therein, which review and approval shall not be unreasonably withheld or delayed. The review of the Traffic Study shall be completed by the City Engineer (or acting Engineer); provided, however, the City may also obtain an independent third-party review of the Traffic Study from a professional traffic engineering consultant (for example, The Mannik & Smith Group, Inc.).

2. In the event that the Traffic Study determines that the Traffic Signal is not warranted due to the Intended Development, then the engineering plans for the fifth (5th) Phase of the Intended Development shall be approved by the City without regard to the Traffic Signal.

3. In the event the Traffic Study determines that the Traffic Signal is warranted due to the Intended Development, then the following terms shall apply:

- a. The Traffic Study shall include a determination of when the Traffic Signal is warranted to be installed;
- b. The Traffic Study shall include a percentage of the total traffic at the proposed location of the Traffic Signal that will be caused by the Intended Development (the “**Pulte Percentage**”);
- c. Pulte and the City shall obtain a statement of probable cost of the Traffic Signal from a certified Engineer with experience in traffic signals (the “**Total Cost**”), which Total Cost shall include the cost of the Traffic Study. The Total Cost shall then be multiplied by the Pulte Percentage to determine Pulte’s financial obligation for the Traffic Signal (“**Pulte’s Cost**”);
- d. As part of the City’s approval process of the Plat for the fifth (5th) Phase of the Intended Development (prior to approval from the Planning Commission and City Council), Pulte shall make payment of Pulte’s Cost to the City along with Pulte’s standard payments of other obligations to the City, including plat bonding and security; and
- e. The City shall be responsible to install the Traffic Signal.

Notwithstanding the above, the City shall not be obligated to actually install the Traffic Signal and may utilize the funds from Pulte (i.e. the Pulte’s Cost) for other potential traffic improvements, such as adding a turn lane in the existing development along Moorewood Avenue, a Rectangular Rapid Flashing Beacon Crosswalk and striping programs or adding a traffic signal at another location. In the event that the City elects to utilize the funds from Pulte (i.e. Pulte’s Cost) for alternative traffic improvements, the City agrees and acknowledges that Pulte shall no longer be obligated for any costs associated with any traffic improvements recommended in the Traffic Study and the City will deem the Intended Development to be in compliance with regard

to any traffic improvements and shall not require Pulte to install or pay for any further traffic improvements for the Intended Development.

4. In addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered hereunder, Pulte and the City agree to perform, execute and deliver, or cause to be performed, executed and delivered all such further and reasonable acts, deeds and assurances as may be reasonably necessary to consummate the intent of this MOU.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, parties have hereunto set their hands on this _____ day
of _____, 2023.

CITY OF AVON LAKE, OHIO

By: _____
Gregory Zilka, Mayor

Date: _____

APPROVED AS TO FORM:

Gary Ebert, Director of Law

PULTE HOMES OF OHIO LLC

By: _____
Brad Piroli, Vice President of Land Acq.

Date: _____

EXHIBIT A



October 7, 2022

Mr. Jim O'Connor
Director of Planning
Pulte Homes
387 Medina Road, Suite 1700
Medina, OH 44256

Traffic Engineering Services Proposal Port West PUD Traffic Impact Study

Dear Mr. O'Connor,

GPD Group appreciates the opportunity to submit this Traffic Engineering Services Proposal for the preparation of a Traffic Impact Study for the residential development in Avon Lake, Ohio. The following scope consists of the anticipated scope of work needed to study the surrounding traffic operations and proposed access configuration:

1. A field visit will be performed to document and verify the existing roadway and operational conditions. A sight distance evaluation will be performed at the proposed location of each site driveway during the field review.
2. Peak hour turning movement traffic counts will be conducted at the following intersections from 7:00 AM to 7:00 PM on a typical weekday in order to obtain existing traffic volumes adjacent to the site:

- Walker Road / Cedarwood Road
- Walker Road / Moorewood Avenue

Traffic volumes will be split into the following categories: Pedestrians, Cars, Trucks, and Busses; in order to determine the presence and the percentage of each type of vehicle at the study locations.

3. The study intersections will include the following locations:
 - Walker Road / Cedarwood Road / Costal Drive
 - Walker Road / Moorewood Avenue / Midship Drive
4. Trip generation calculations will be performed to determine the anticipated amount of traffic that will be generated by the proposed development based on data provided in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th Edition. **[completed as part of the initial trip generation analysis]**
5. The generated trips will be distributed throughout the study area based on the proposed access configuration and anticipated travel patterns. **[completed as part of the initial trip generation analysis]**
6. An annual growth factor will be calculated for the project area and applied to the turning movement count data in order to project the Design Year traffic volumes.
7. Traffic signal warrant analysis will be conducted at the study intersections.

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8. Capacity analyses will be performed at the study intersections utilizing HCS software for the Design Year 'No-Build' and 'Build' conditions.

The results of the capacity analyses will determine whether the proposed access configuration is appropriate and whether any further roadway modifications or improvements should be considered.

9. Auxiliary turn lane warrants will be evaluated for the two study intersections under the Design Year conditions. Storage length calculations will be performed should any turn lanes be found to be warranted and to determine if existing turn lanes are appropriately sized.
10. Using the information and analysis developed, a draft traffic study will be prepared for your review and comment. It is assumed that your comments will be primarily editorial in nature and will not require changes to the calculations and analysis. The draft study will be submitted in electronic format to the Client for review.

8. Upon receipt of comments from the Client, the study will be finalized and submitted.

GPD Group's Lump Sum Fee for the preparation of this Traffic Impact Study to the above scope of work is \$8,500. These fees include all direct reimbursable expenses that may be incurred by GPD Group as the project progresses such as vehicle mileage, photographs, mailings, etc.

Excluded from the fee is GPD Group's attendance at any meetings that you may wish GPD Group to attend as the project proceeds. These meetings, such as Planning Commission or Council meetings and the like would be invoiced based at a rate of approximately \$150.00 per hour '+' actual expenses incurred. Also excluded from the fee would be any significant changes to the scope of work of the Traffic Impact Study deemed necessary by you or the review agency as the project progresses. This includes any change to the number of residential units that will be included in the development.

Please feel free to call me at (216) 927-8688 or e-mail me at kwestbrooks@gpdgroup.com if you have any questions or comments on the proposal. If you would like us to prepare this study as requested, please sign the authorization to proceed below and return it to our attention via email or standard mail.

Respectfully Submitted,
GPD Group



Kevin P. Westbrooks, PE, PTOE
Project Manager / Traffic Engineer

TERMS AND CONDITIONS

Glaus, Pyle, Schomer, Burns and Dehaven, Inc. dba GPD Group ("GPD") shall perform the services outlined in the proposal attached to this agreement, or any other performance rendered by GPD, (collectively referred to as the "Work") in accordance with the following Terms and Conditions for the party identified as Client ("Client") in the corresponding proposal:

Information and Access. When applicable, Client shall make available any and all plans, drawings, or other documentation, which relate to the Work in addition to any other information which one should consider as it relates to the Work. Client shall provide additional information upon GPD request. In the event that new, modified or changed information becomes available Client shall inform GPD of such immediately. Client shall insure access to the property or site(s) is available to GPD at agreed upon times, and Client shall make available representatives who will be the most knowledgeable concerning the Work which GPD shall perform. Client acknowledges that GPD shall regard all Client information as reliable and accurate, and hereby warrants such. Client agrees that GPD may assume that all plans, designs, structures and specifications related to the Work have been properly designed in accordance with the highest standard of care and are adequate for all purposes other than specifically addressed by the Work. GPD shall not be responsible for existing, hidden or unknown conditions and shall have no responsibility for the discovery, presence, handling, removal, disposal of hazardous materials of any form.

Billing and Payment. GPD, at its option, will submit invoices for services and reimbursable expenses on a monthly basis, unless otherwise agreed upon. Client shall pay invoices in full within 30 days after the invoice date. Any invoice or part thereof which has not been paid within 60 days shall accrue interest at 1.5% per month (equivalent to 18% per annum) until paid in full. GPD shall have the right to suspend the Work, terminate the agreement and retain and/or retrieve all work product until such invoices have been paid in full. The Client agrees to pay all costs of collection for unpaid fees, including but not limited to attorney costs.

Timeliness of Performance. GPD will endeavor to perform the Work with reasonable diligence and expediency consistent with the applicable standard of care. GPD shall not be responsible for, and will not be held liable for, damages arising directly or indirectly from any delays for causes outside of GPD control, including the actions or inactions of Client, other subcontractors or consultants, and third parties. If delays resulting from any such causes increase the cost and/or time required by GPD to perform the Work, GPD shall be entitled to an equitable adjustment in schedule and/or compensation.

Standard of Care. GPD's services shall be performed in a manner consistent with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time in the same location.

Indemnification. GPD and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other (which collectively includes officers, directors and employees) harmless from any and all damages, liabilities, claims, expenses or costs (including reasonable attorney's fees, expert-witness fees and defense costs) to the extent caused by its own negligent acts, professional errors, or omissions arising out of the Work or the performance of this agreement. Neither party shall be obligated to indemnify and hold the other harmless in any manner whatsoever for the negligence of another.

Risk Allocation. In recognition of the relative risks and rewards of the Work to Client and GPD, the risks have been allocated such that Client agrees, to limit the liability of GPD to Client, and any party claiming through Client through contract or otherwise, to a maximum aggregate total of five times the GPD fee, which under no circumstances shall exceed fifty thousand dollars (\$50,000.00). This limitation shall apply to any and all liability or cause of action, including but not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

Termination of Services. Either party may terminate this agreement upon 10 days written notice should the other fail to perform its obligations hereunder. In the event of such termination, Client shall pay GPD for all services rendered to the date of termination, all reimbursable expenses and reasonable termination expenses.

Ownership of Work Product. All Work, instruments of service, reports, drawings, specifications, electronic files, field data, notes and all other preparations by GPD shall remain the property of GPD, hereafter referred to as "Work Product". GPD shall retain all common law, statutory, and other reserved rights, including the copyright thereto in the Work Product. Client shall have a nonexclusive license in the Work Product that may not be used for any other purpose or project other than for which it was created without the written consent of GPD. Client reuse in violation of this section, or any changes or modifications to the Work Product not performed by GPD shall be considered an "Unauthorized Use." Client shall waive any and all claims related to Unauthorized Use and agrees to indemnify, defend, and hold GPD harmless from any and all claims, demands, expenses, including attorney's costs which may arise from such Unauthorized Use. The rights granted to Client in this section shall transfer upon payment and to the extent paid.

Confidentiality. Unless required by law or court order, GPD and Client shall not disclose the terms of this agreement or substance of the Work and shall treat such as confidential. This section shall not apply to any information after it is generally available to the public other than as a result of disclosure by GPD or Client, which is generally available to the public on the date of this agreement or which was lawfully received from a third party without a restriction on disclosure.

Dispute Resolution. With the exception of GPD claims related to billing and payment matters, which shall be at GPD's sole discretion, any claim or dispute between GPD and Client shall be submitted to non-binding mediation prior to the institution of arbitration proceedings, and shall be brought in a proper venue in Summit County, Ohio. This agreement and the Work shall be governed by the laws of the State of Ohio. No action or claim whether in tort, contract, or otherwise shall be brought against GPD more than two (2) years after the completion of the applicable portion of Work.

Entire Agreement. These terms and conditions and the attached GPD proposal describe the entire agreement between GPD and Client. Both parties mutually agree that all other terms and conditions are hereby rejected. No amendments to these terms and conditions shall be effective unless acknowledged by written signature. Client's acceptance to these terms and conditions, whether acknowledged by signature or not, is a condition precedent to GPD's commencement of the Work.

No Third Party Beneficiary. This agreement is made for the benefit of GPD and Client and is not intended to benefit any third party or be enforceable by any third party. The rights of the GPD and Client to terminate, rescind, or agree to any amendment, waiver, variation or settlement shall not be subject to the consent of a third party.

Assignment. Client shall not assign this agreement without the consent of GPD. GPD shall be permitted to assign rights and obligations in this agreement as it sees fit.

Severability. If any term, covenant, condition or provisions of this agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

The individual signing below hereby represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of the firm represented as Client herein and shall bind such parties in a corporate capacity. Signature represents authorization and acceptance of the terms and conditions.

<u>SIGNATURE</u>	
Client: _____ Name of Firm	
_____ Signor Name	_____ Signature
_____ Title	_____ Date