

Move for suspension of Charter Section 4.10.
(5 day delivery requirement) & Council Rule 3
(24 hour agenda requirement).

RECEIVED JUN 27 2022

CITY OF MIDDLEBURG HEIGHTS, OHIO

Resolution No. 2022-**60**

Introduced by: Mr. Bortolotto

A RESOLUTION

AUTHORIZING THE MAYOR TO ENTER INTO A PROJECT AWARD AGREEMENT WITH CUYAHOGA COUNTY ACCEPTING AN AWARD OF AN AMOUNT NOT TO EXCEED \$854,355.00, TO COMPLETE THE SOUTHLAND DISTRICT COMPLETE STREETScape IMPROVEMENT PROJECT IN MIDDLEBURG HEIGHTS

WHEREAS, the City is planning to make improvements in the Southland District by completing the Southland District Complete Streetscape Improvement Project, and has requested funding from the County; and

WHEREAS, the purpose of the County award is to complete the Southland District Complete Streetscape Improvement Project in Middleburg Heights.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That Cuyahoga County will award an amount not to exceed \$854,355.00 to support the completion of the Southland District Complete Streetscape Improvement Project in Middleburg Heights, subject to certain conditions set forth in the agreement and its appendices attached hereto and marked "Exhibit A".

Section 2: That the Mayor is hereby authorized to accept the award and enter into the agreement with Cuyahoga County, marked as "Exhibit A", for the Southland District Complete Streetscape Improvement Project.

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 any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Passed: 6/28/22

David Bortolotto
President of Council

Attest: M. Meola

Approved On: 6-29-22

Presented to Mayor: 6/29/22

Matthew Castle
Mayor

	Yeas	Nays
Bortolotto	<u>X</u>	<u> </u>
Ali	<u>+</u>	<u> </u>
Sage	<u>X</u>	<u> </u>
Meany	<u>X</u>	<u> </u>
McGregor	<u>+</u>	<u> </u>
Ference	<u>X</u>	<u> </u>
Grech	<u>ABSENT</u>	<u> </u>

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res. 2022-60 adopted by the Council of the City of Middleburg Hts., on 6/28/22 was posted for a period of fifteen days, beginning 6/30/22 and remained so posted for fifteen days at the two posting places as designated by Charter.
Mary Ann Meola
Clerk

CERTIFICATE
I, Mary Ann Meola Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Res. 2022-60 passed on the 28th day of June 2022 by said Council.
Mary Ann Meola
Clerk of Council

PROJECT AWARD AGREEMENT
BETWEEN THE CITY OF MIDDLEBURG HEIGHTS AND CUYAHOGA COUNTY

THIS PROJECT AWARD AGREEMENT ("Agreement") is made and entered into as of the date signed by the Cuyahoga County Executive ("Effective Date") by and between the County of Cuyahoga County, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the effective date hereof (the "County") and the City of Middleburg Heights, ("Recipient"), a body corporate and politic and a political subdivision of the State of Ohio, having a principal place of business at 15700 Bagley Road, Middleburg Heights, Ohio 44130.

RECITALS

WHEREAS, Recipient has requested funding from the County to complete the Southland District Complete Streetscape Improvement Project in Middleburg Heights, Ohio ("Project"); and

WHEREAS, pursuant to County Council Approval, the County will award an amount not to exceed \$854,355.00 (the "Award") to Recipient to support the Project, as more fully described in Exhibit 1;

WHEREAS, the County and Recipient desire to enter into this Agreement to govern their respective obligations with respect to the Award for the Project.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties from the other, and intending to be legally bound, the Parties agree as follows:

AGREEMENT

1. **ACCURACY OF RECITALS; DEFINED TERMS**

The Parties acknowledge the accuracy of the above Recitals, which are incorporated into and made a part of this Agreement.

2. **CONFIRMATION OF AWARD**

Recipient has requested, and the County has awarded Recipient, an award in an amount not to exceed \$854,355.00 to be disbursed to Recipient in one disbursement. If the Project has more than one funding source, the Award shall be disbursed to Recipient upon the receipt by Recipient of all other funding sources.

3. CONDITIONS

The obligations of the County under this Agreement are subject to the satisfaction of the following condition, which condition may only be waived by the County (in the County's sole discretion and in writing), for whose sole benefit such conditions exist:

- A) Recipient agrees its Award shall not be used to pay for costs outside of those listed on Exhibit 1.

4. REPORTING REQUIREMENTS

Recipient shall provide annual reports to the County of the status of the Project and provide detailed documentation of all expenditures made from the Award as of the date of the submission of the annual report. The report shall be due one year from the date of the disbursement of funds from the County to the Recipient or upon completion of the Project whichever is earlier.

The County reserves the right to request additional reports pertaining to the Project. It is the responsibility of Recipient to furnish the County with reports as requested.

Failure to provide reports, maintain documentation, and/or provide any additional reporting requested by the County may result in the declaration of an Event of Default as outlined in Section 8 of this Agreement.

5. INDEMNIFICATION

The Parties acknowledge that as a political subdivision of the State of Ohio, the County does not indemnify any person or entity. The Parties agree that no provision of this Agreement may be interpreted to obligate the County to indemnify or defend another party.

6. PUBLIC RECORDS; CONFIDENTIALITY

The Parties acknowledge that the County is a political subdivision of the State of Ohio and as such is subject to the Ohio Revised Code and other laws related to the keeping of and access to public records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and Recipient and any and all documents in any format or media.

7. REPRESENTATIONS

Recipient represents and warrants:

- A. It has full power and authority to execute, deliver, and perform this Agreement and its obligations; and
- B. The execution, delivery, and performance by Recipient under this Agreement does not, and will not, violate any provision of law or any court order applicable to Recipient, and does not, and will not, conflict with or result in a default, under any agreement or instrument to

which Recipient is a party or by which it or any of its property or assets is or may be bound;
and

- C. This Agreement has by proper action been duly authorized, executed, and delivered and constitutes the legal, valid, and binding obligations of Recipient.

8. DEFAULT

If Recipient breaches any of its representations under this Agreement or fails to perform any of its obligations or is in default under any other condition of this Agreement for a period of thirty (30) days after date of the County's written notice thereof to Recipient ("Event of Default"), the County may, at its sole option, terminate this Agreement and will be under no further obligation to disburse any Award funds remaining under this Agreement. In addition, the County reserves the right, upon an Event of Default, to seek recovery of any Award funds previously disbursed.

9. TERM OF AGREEMENT

This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until the Project is completed, subject to the terms of this Agreement, unless extended by written agreement of the Parties.

If at the end of the term the Recipient has not spent all of the Award on the Project, the Recipient shall return the remaining funds to the County.

10. MISCELLANEOUS

- A. This Agreement, with its exhibits, contains the Parties' entire agreement with respect to the subject matter herein. This Agreement may not be modified except by written instrument signed by both Parties and referring to the specific provisions to be modified.
- B. This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and shall be governed by the laws of the State of Ohio and applicable federal law. Recipient and the County agree that state and federal courts in Cuyahoga County, Ohio will have exclusive jurisdiction over any claim arising out of this Agreement and Recipient and the County consent to the exclusive jurisdiction of such courts. Recipient agrees not to challenge this provision and agrees not to attempt to file, or remove, any legal action related to this Agreement or any alleged breach of this Agreement outside of Cuyahoga County for any reason.
- C. All County contracts, including this Agreement, are subject to all applicable laws adopted in the Cuyahoga County Code, including, but not limited to, Title IV (Ethics) and Title V (Contracts and Purchasing). The Cuyahoga County Code and enacted County ordinances are available at <http://code.cuyahogacounty.us>.
- D. If any part of the Award is used for construction-related labor, Recipient agrees that wages paid to laborers and mechanics employed on the Project under contracts or subcontracts shall be paid at not less than the prevailing rates of wages for laborers and mechanics for the applicable class of work called for by the Project, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, or the Davis-Bacon Act, and shall cause such wages to be paid in accordance therewith, and Recipient

shall require compliance by all contractors and subcontractors of all applicable requirements of Sections 4115.03 through 4115.16, Ohio Revised Code, or the Davis-Bacon Act, including, without limitation, (i) obtaining from the Ohio Department of Industrial Relations, or its federal equivalent, a determination of the prevailing rates of wages to be paid for all classes of work called for by the Project, (ii) obtaining the designation of a Prevailing Wage Coordinator for the Project pursuant to Section 4115.071, Ohio Revised Code, or the Davis-Bacon Act and (iii) ensuring that all contractors and subcontractors receive notification of changes in prevailing wage rates as required under Section 4115.05, Ohio Revised Code, or the Davis-Bacon Act

- E. Recipient's employees may not acquire any personal interest that conflicts with Recipient's responsibilities under this Agreement. Additionally, Recipient will not knowingly permit any public official or public employee who has any responsibilities related to this Agreement to acquire an interest in anything or any entity under Recipient's control, if such an interest would conflict with that official's or employee's duties. Recipient will disclose to the County knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Agreement. Recipient will take all legal steps to ensure that such a person does not participate in any action affecting the work under this Agreement, unless the County has determined that, in the light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.
- F. All notices, requests, demands, or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered by hand or by confirmed facsimile; (ii) upon the fifth day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) upon the date of the courier's verification of delivery at the specified address if sent by a nationally recognized overnight express courier.

County's address for notification is:

Cuyahoga County Office of the Council
2079 East 9th Street
Cleveland, Ohio 44115
Attention: Cynthia Mason, Research and Policy Analyst

With a copy to:

Cuyahoga County Department of Law
2079 East 9th Street
Cleveland, Ohio 44115
Attention: Director of Law

Recipient's address for notification is:

City of Middleburg Heights

15700 Bagley Road
Middleburg Heights, OH 44130
Attention: Charles Bichara, Director of Economic Development

- G. Neither Party shall be in default if its failure to perform any obligation hereunder is caused solely by supervening conditions beyond that Party's reasonable control, including, without limitation, acts of God, civil commotion, strikes, labor disputes, or governmental demands or requirements.
- H. The failure of either Party to require performance by the other party of any provision of this Agreement or any exhibit shall not affect its right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provisions of this Agreement be taken or deemed to be a waiver of the provision itself.
- I. If any provision of this Agreement is invalid or unenforceable, that provision will be changed and interpreted to accomplish the Parties' objectives to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.
- J. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, or describe the scope or extent of such section.
- K. Recipient may not assign this Agreement without the prior written consent of the County.
- L. Except as expressly provided in this Agreement, no amendment, change, waiver, or discharge of this Agreement is valid unless in writing and signed by both of the Parties.
- M. Each of the Parties will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including ORC Section 125.111 and all related Executive Orders.
- N. Each of the Parties shall comply with all applicable state and federal laws regarding keeping a drug-free workplace.
- O. Recipient agrees to make all pertinent books and records and other documents pertaining to its obligations under this Agreement available to the County and its designated agents for purpose of audit and examination upon reasonable request during the term of this Agreement and for a period of two (2) years from the completion date of the Project or final payment under this Agreement, whichever is later.
- P. Recipient agrees to cooperate with the Cuyahoga County Agency of Inspector General or the Department of Internal Audit if it is determined there should be an investigation or audit.
- Q. This Agreement may be executed in separate original or facsimile counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument.

11. NON-DISCRIMINATION

Recipient agrees to provide the services hereunder without discrimination on account of gender, race, sex, color, religion, national origin, age, occupation, physical or mental disability or veteran status, to the extent required by law. The Parties agree that discrimination and affirmative action clauses contained in Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of

Labor in Title 41, Part 60 of the Code of Federal Regulations, are incorporated to the extent binding upon Recipient.

12. ELECTRONIC SIGNATURE POLICY

Recipient, its officers, employees, subcontractors, agents, or assigns, agree that this transaction may be conducted by electronic means and agree that all documents requiring the County's signatures and Recipient's signatures, including this Agreement, may be executed by electronic means, and that the electronic signature affixed by either Party to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. Recipient also agrees on behalf of the aforementioned entities and persons, to be bounded by the provisions of Chapter 304 and 1306 of the Ohio Revised Code.

IN WITNESS WHEREOF, this Agreement has been duly signed and delivered by the undersigned as of the day and year first above written.

City of Middleburg Heights, Ohio

COUNTY OF CUYAHOGA, OHIO

By: Matthew J. Castelli

Its: Mayor

By: _____

Armond Budish, County Executive
or designee pursuant to Executive Orders
No. EO2018-0002 dated October 31, 2018
or No. EO2018-0001 dated February 26, 2018

The legal form and correctness
of this Contract is hereby approved:
Law Department
County of Cuyahoga, Ohio

Gregory G. Huth, Director of Law

By: _____
Assistant Director of Law

Electronic Signature:

EXHIBIT 1

(Recipient's application submitted to the County requesting ARPA funding for the Project)