

# CITY OF MIDDLEBURG HEIGHTS, OHIO

Resolution No. 2024- **64**

Introduced By: Mayor Matthew Castelli

## A RESOLUTION

### **AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT (LPA-ODOT-LET PROJECT AGREEMENT) TO INSTALL PEDESTRIAN CROSSINGS, SIDEWALK IMPROVEMENTS, AND MULTI-MODAL TRANSPORTATION ENHANCEMENTS ALONG SMITH ROAD FROM WEST 130<sup>TH</sup> TO PEARL ROAD IN THE CITY OF MIDDLEBURG HEIGHTS AND DECLARING AN EMERGENCY**

WHEREAS, the City of Middleburg Heights, hereinafter referred to as the Local Public Agency (LPA) has determined the need for the described project: *Install pedestrian crossings, sidewalk improvements, and multi-modal transportation enhancements along Smith Road (CR-64) from West 130<sup>th</sup> Street to Pearl Road in the City of Middleburg Heights.*

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

Section 1: **Consent Statement:** Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above-described project as detailed in the LPA-ODOT-Let Agreement entered into between the parties, if applicable.

Section 2: **Cooperation Statement:** The LPA shall cooperate with the Director of Transportation in the development and construction of the above-described project and shall enter into a LPA Federal ODOT Let Project Agreement, if applicable, as well as any other agreements necessary to develop and construct the Project.

***The LPA agrees to participate in the cost of the project. The LPA agrees to assume and contribute the entire cost and expense of the improvement less the amount of Federal-aid funds set aside by the Director of Transportation for the financing of this improvement from funds allocated by the Federal Highway Administration, United States Department of Transportation. The LPA agrees to assume and bear one hundred percent (100%) of the cost of preliminary engineering, right-of-way and environmental documentation.***

***The LPA further agrees to pay 100% of the cost of those features requested by the LPA which are determined by the State and Federal Highway Administration to be unnecessary for the Project.***

***The LPA further agrees that change orders and extra work contracts required to fulfill the construction contracts shall be processed as needed. The State shall not***

***approve a change order or extra work contract until it first gives notice, in writing, to the LPA. The LPA shall contribute its share of the cost of these items in accordance with other sections herein.***

The LPA agrees that if Federal Funds are used to pay the cost of any consultant contract, the LPA shall comply with 23 CFR 172 in the selection of its consultant and administration of the consultant contract. Further the LPA agrees to incorporate ODOT's "Specifications for Consulting Services" as a contract document in all of its consultant contracts. The LPA agrees to require, as a scope of services clause, that all plans prepared by the consultant must conform to ODOT's current design standards and that the consultant shall be responsible for ongoing consultant involvement during the construction phase of the Project. The LPA agrees to include a completion schedule acceptable to ODOT and to assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.

Section 3: **Authority to Sign:** The LPA hereby authorizes the Mayor of said **City of Middleburg Heights** to enter into and execute contracts with the Director of Transportation which are necessary to develop plans for and to complete the above-described project; and to execute contracts with ODOT pre-qualified consultants for the preliminary engineering phase of the Project.

Upon request of ODOT, the Mayor is also empowered to execute any appropriate documents to affect the assignment of all rights, title, and interests of the **City of Middleburg Heights** to ODOT arising from any agreement with its consultant in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

Section 4: **Utilities and Right-of-Way Statement:** The LPA agrees that all right-of-way required for the described project will be acquired and/or made available in accordance with current State and Federal regulations. The LPA also understands that right-of-way costs include eligible utility costs.

The LPA agrees that all utility accommodation, relocation and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

Section 5: **Maintenance:** Upon completion of the Project, and unless otherwise agreed, the LPA shall: (1) provide adequate maintenance for the Project in accordance with all applicable State and Federal law, including, but not limited to, Title 23, U.S.C., Section 116; (2) provide ample financial provisions, as necessary, for the maintenance of the Project; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

Section 6: 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.

Section 7: That this Resolution is hereby declared to be an emergency measure to expedite the highway project and to promote highway safety. Wherefore, provided this Resolution receives the affirmative vote of at least two-thirds (2/3) of the members of Council it shall take effect and be in force immediately upon its passage and approval by the Mayor.

Dan Bortolotto  
President of Council

Matthew Cusick  
Mayor

Passed: 9/10/24

Presented to Mayor: 9/11/24

Attest: M. Meola  
Clerk of Council

Approved On: 9-11-24

	Yea	Nay
Bortolotto	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ali	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sage	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Meany	<input checked="" type="checkbox"/>	<input type="checkbox"/>
McGregor	<u>ABSENT</u>	<input type="checkbox"/>
Ference	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Zakel	<input checked="" type="checkbox"/>	<input type="checkbox"/>

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res 2024-64 adopted by the Council of the City of Middleburg Hts., on 9/10/24 was posted for a period of fifteen days, beginning 9/12/24 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. 2024-64 passed on the 10<sup>th</sup> day of September 2024 by said Council.

Mary Ann Meola  
Clerk of Council

CFDA 20.205

## LPA FEDERAL ODOT-LET PROJECT AGREEMENT

**THIS AGREEMENT** is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and the **City of Middleburg Heights, 15700 Bagley Road, Middleburg Heights, Ohio 44130 (LPA).**

### 1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (D) of the **Ohio Revised Code (ORC)** provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 **PID 117560 CUY Middleburg Hts TLCI FY 2023 (PROJECT)** is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities of ODOT and the LPA for administration of the PROJECT.

### 2. LEGAL REFERENCES AND COMPLIANCE

- 2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are incorporated, by reference, in their entirety:

#### A. FEDERAL

- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- 23 CFR 1.33 – Conflicts of Interest
- 23 CFR Part 172 Procurement, Management and "Administration of Engineering and Design Related Service"
- 23 CFR 630.106 – Authorization to Proceed
- 23 CFR 636.116 – What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?
- 23 CFR Part 645 - Utilities
- 48 CFR Part 31 – Contract Cost Principles and Procedures
- 49 CFR Part 26 - Participation by Disadvantaged Business Enterprises "DBE" in Department of Transportation Financial Assistance Programs
- 23 USC § 112 Letting of Contracts
- 40 USC §§ 1101-1104, – "Selection of Architects and Engineers"
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 102.03
- ORC 153.65 -153.71
- ORC 5501.03(D)
- ORC 2921.42 and 2921.43
- Ohio Administrative Code 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- ODOT's Construction and Material Specifications Manual
- ODOT's Construction Administration Manual of Procedures

2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING AND PAYMENT

3.1 The total cost for the PROJECT is estimated to be \$350,000.00 as set forth in Attachment 1.

ODOT shall provide to the LPA 80 percent of the eligible construction costs, up to a maximum of \$280,000.00 in federal MPO-STBG funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Managers, and costs beyond the stated maximums will be the responsibility of the LPA. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities.

The LPA agrees to assume and bear one hundred percent (100%) of the cost of preliminary engineering, right-of-way, and environmental documentation.

3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100 percent Locally funded work, and all cost overruns and contractor claims in excess of the maximum(s) indicated in 3.1 above.

3.3 Payment or reimbursement to the LPA shall be submitted to:

City of Middleburg Heights
15700 Bagley Road
Middleburg Heights, Ohio 44130

4. PROJECT DEVELOPMENT

4.1 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

4.2 Project Development shall follow ODOT's Project Development Process and all ODOT standards for environmental evaluations, design, plan preparation, R/W acquisition, utility relocation and other processes as set out in ODOT's Design Reference Resource Center, available on ODOT's website <https://www.transportation.ohio.gov/working/publications>. Responsibilities for development of the PROJECT shall be as follows and further described herein:

## LPA ODOT Let Project Responsibility Assignments

PDP Phase	Activity	Responsibility		Commentary
		LPA	ODOT	
Planning	All	X		ODOT to provide coordination as needed. ODOT will program the project in Ellis and get the project added to the STIP.
Preliminary Engineering	All	X		ODOT to: 1) Provide coordination as needed 2) Review all plans and documents and provide comments
Environmental Engineering	Stage 1 Plans	X		ODOT to review all plans and documents and provide comments.
	Stage 2 Plans	X		ODOT to review all plans and documents and provide comments.
	Value Engineering		X	ODOT will coordinate Value Engineering if required. Refer to Section 5.2.
	Cost Estimates	X		LPA/Consultant shall prepare a project estimate
	NEPA	X		ODOT will coordinate NEPA approval. Refer to Section 5 for Environmental Responsibilities.
	Permits		X	ODOT will obtain permits needed to construct the PROJECT.
	R/W Plans	X		ODOT to review all plans and documents and provide comments.
	Public/Stakeholder Involvement (PI)	X		ODOT to review all PI plans and materials and provide comments.
Final Engineering & R/W	R/W Acquisition & Relocation	X		Refer to Section 7 for detailed requirements.

	Utility Relocation	X		Refer to Section 7.6 for additional details.
	Railroad Coordination and Agreements		X	Refer to Section 7.8 for additional details.
	Stage 3 Plans		X	ODOT to review all plans and documents and provide comments.
	Cost Estimates	X		LPA shall prepare in Estimator format.
	Final Plan Package	X		ODOT to review all plans and documents and provide comments.
	Endangered Species Mitigation		X	ODOT is responsible for Endangered Species Act mitigation requirements (bat mitigation) and the needed mitigation for ESA impacts.
	Stream and Wetland Mitigation	X		The LPA is responsible for obtaining the necessary stream and wetland mitigation. This is typically acquired through mitigation bank or in-lieu fee credit purchases
	PI	X		ODOT to review all PI plans and materials and provide comments.
Construction	Advertise		X	LPA and consultants to assist in responding to bidder questions and preparation of any addenda.
	Award		X	ODOT Awards Committee
	Administer Construction Contract		X	ODOT will administer the construction contract. The LPA and LPA's consultants shall respond promptly to requests for information or other construction issues.
	PI	X	X	ODOT to coordinate in cooperation with the LPA.
All Phases	Federal Authorizations		X	ODOT will coordinate and obtain all needed FHWA Authorizations and notify the LPA upon approval.
All Phases	Encumbrance of Funds		X	ODOT will encumber funds in accordance with this Agreement.

- 4.3 The LPA shall designate an LPA employee to act as the LPA Project Manager and act as the point of contact for all communications with ODOT.
- 4.4 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.5 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

## 5. ENVIRONMENTAL RESPONSIBILITIES

### 5.1 General Requirements

- A. In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement activities, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act (NEPA) and related regulations, including but not limited to the requirements of the National Historic Preservation Act.
- B. Whichever party obtains the Project's environmental clearance or permit shall be responsible for assuring compliance with all commitments made as part of such clearance or permit requirements during the construction of the PROJECT.
- C. The LPA shall require its consultant to prepare a final environmental document pursuant to the requirements of NEPA.

### 5.2 Use of ODOT Consultant Agreements

- A. ODOT may provide services through ODOT held consultant agreements at its discretion subject to funding participation by the LPA. Agreements that may be available for use include the following:
  - 1. If the LPA (County Engineer) chooses to utilize the County Engineers Association of Ohio (CEAO) task order contract for environmental services, the parties agree that the total cost shall be shared based on the parameters, Federal and local funding rates, established when the task order was set up and encumbered. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any acquisition authorization. Once the PROJECT is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.
  - 2. If the LPA (County Engineer) chooses to utilize the CEAO task order contract for R/W acquisition services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent Federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any acquisition authorization. Once the PROJECT is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the



estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.

3. Value Engineering. If Value Engineering is required, ODOT may elect to use an ODOT held agreement to assist in administering the Value Engineering process. If Value Engineering is required, the LPA shall require its consultants to participate as needed.

## 6. CONSULTANT SELECTION AND ADMINISTRATION

### 6.1 General Requirements

- A. The LPA must select a consultant/ consultant team who is prequalified by ODOT for all services to be performed by the consultant(s) and subconsultant(s).
- B. The LPA consultant agreement must incorporate ODOT's "Specifications for Consulting Services – 2016 Edition." as a contract document.
- C. The LPA consultant agreement shall require, as a scope of services clause, that project development follow ODOT's Project Development Process, and that all documents and plans prepared by the consultant must conform to ODOT's current standards, including the electronic deliverable requirements of ODOT's CADD Engineering Standards Manual, and Location and Design Manual Volume 3, Section 1500.
- D. The LPA consultant agreement shall require ongoing consultant involvement during the construction phase of the PROJECT.
- E. The LPA consultant agreement shall require a completion schedule acceptable to ODOT.
- F. The LPA must assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.
- G. The LPA must cooperate with ODOT in directing additional or corrective work, and to recover damages due to errors or omissions.
- H. The LPA consultant agreement shall require its consultant to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT and shall execute the Conflict of Interest Disclosure Form specifying that there is no conflict of interest.
- I. If Federal funds are used to pay the cost of any contract for professional services, the LPA must comply with 23 CFR 172, ORC 153.65 through 153.71 and Sections 6.2 and 15.3 below in the selection of consultants and must administer consultant agreements in accordance with ODOT's Manual for Administration of Contracts for Professional Services. Professional services, as defined in ORC 153.65(C) and 5526.01 include the practice of engineering including inspection of construction, the practice of surveying, the practice of architecture including landscape architecture, the evaluation of environmental impacts, the acquisition of R/W, and administration of construction contract claims.

- 6.2 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the Project Design Engineer and serve as the LPA's principal representative for attending to project responsibilities or engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 153.65

through 153.71. The pre-qualified list is available on the ODOT website at: [Consultant Services | Ohio Department of Transportation](#).

## 7. R/W/UTILITIES/RAILROAD COORDINATION

- 7.1 All R/W Acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies and procedures issued by ODOT.
- 7.2 If existing and/or newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who performs real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any of the respective R/W functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the Appraisal and Appraisal Review functions. Appraisal Review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.
- 7.3 All Relocation Assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and rules, policies and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the Relocation and Relocation Review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 7.4 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and procedures.
- 7.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W has been cleared of encroachments, and that utility facilities have been appropriately relocated, or accounted, for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Certification of Right-of-Way Control Letter, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act and, as appropriate, certify compliance to FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 7.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in ODOT's Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a Utility Relocation Agreement with each utility prior to the letting of construction.
- 7.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval. Consistent with Sections 7.1 and 7.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI of the Uniform Act requirements are included in the instrument which transfers the property. Consistent with sections 7.1 and 7.4 of this Agreement, the LPA shall assure that if the LPA grants a permit or license for the property acquired for this PROJECT that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.

7.8 Unless by prior written agreement, the LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the ORC regarding all activities relating to Railroad-Highway projects.

7.9 No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.

## 8. ADVERTISING, SALE, AND AWARD

8.1 ODOT will prepare the State's estimate and manage the advertising, sale, and award process. The LPA and its consultant shall assist in responding to bidder questions, preparation of any addenda and other coordination as needed. ODOT's Awards Committee shall determine award of the contract.

## 9. CONSTRUCTION CONTRACT ADMINISTRATION

9.1 ODOT will administer the construction contract in accordance with ODOT's Construction Administration Manual of Procedures. The LPA and its consultants shall respond promptly to requests for information or other construction issues. The LPA shall review and approve all change orders. The LPA and LPA's consultant shall assist in defending ODOT against any contractor claims.

## 10. CERTIFICATION AND RECAPTURE OF FUNDS

10.1 This Agreement is subject to ODOT's determination that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management (OBM), as required by ORC 126.07. If ODOT determines that insufficient funds have been appropriated for the purpose of this Agreement or if the OBM fails to certify the availability of funds, this Agreement, or any renewal thereof, will terminate on the date funding expires.

10.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, which will be due immediately. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from contractor performance and payment bond(s) and consultant insurance shall be used to offset the Federal dollars reimbursed to FHWA.

## 11. NONDISCRIMINATION

11.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

11.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such project work.

11.3 The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement and in the fulfillment of DBE-related requirements set forth by ODOT. The LPA shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. ODOT's DBE Program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. The fulfillment of DBE-related requirements by the LPA is a legal obligation and failure to do so shall be treated as a violation of this Agreement.

## 12. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

12.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultant(s) and/or contractor(s) performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultant(s) and/or contractor(s) shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices, or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.

12.2 The LPA shall not allow its consultant(s) and/or contractor(s) to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant(s) and/or contractor(s) has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Consultant(s) and/or contractor(s) making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

12.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

## 13. TERMINATION; DEFAULT AND BREACH OF CONTRACT

13.1 Neglect by or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such neglect or failure is the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not

reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.

- 13.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred and ODOT determines that the default can be remedied, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 13.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultant(s) and/or contractor(s). Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 13.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.
- 13.5 This Agreement and the obligation of the parties herein may be terminated by either party with thirty (30) days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 13.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

#### 14. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 14.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director

and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in ORC126.30.

- 14.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees, or agents in the performance of the LPA's obligations made or agreed to herein.
- 14.3 If an LPA pursues legal action against any utility for costs incurred due to delay in removal, relocation or abandonment in place, the LPA is entitled to be reimbursed from any settlement or award all attorney fees and costs incurred while preparing for litigation.

15. NOTICE

15.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Matthew J. Castelli, Mayor	John P. Picuri, P.E. P.S., District Deputy Director
City of Middleburg Heights	Ohio Department of Transportation, D-12
15700 Bagley Road	5500 Transportation Boulevard
Middleburg Heights, Ohio 44130	Garfield Heights, Ohio 44125

16. GENERAL PROVISIONS

16.1 *Financial Reporting and Audit Requirements:* If one or more phases of this Agreement include a sub-award of Federal funds to the LPA, the LPA shall comply with the financial reporting and audit requirements of 2 CFR Part 200. If not, the financial reporting and audit requirements remain with ODOT.

All non-Federal entities, including ODOT's LPA subrecipients, that have aggregate Federal award expenditures from all sources of \$750,000 or more in the non-federal entity's fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

LPAs that expend Federal and State funds in the Preliminary Engineering and/or R/W phases of the PROJECT must track these payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Award (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring funds related to this PROJECT are reported when the activity related to the Federal award occurs.<sup>1</sup> Further, the LPA may make this determination consistent with 2 CFR §200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the

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<sup>1</sup> Per 2 CFR §200.502

correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

- 16.2 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three (3) years after FHWA approves the LPA's final Federal voucher for reimbursement of PROJECT expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this Agreement.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

- 16.3 *Ohio Ethics and Conflict of Interest Laws:* LPA agrees they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics and Conflict of Interest law as provided by ORC102.03, 102.04, 2921.42 and 2921.43, and CFR 1.33.
- 16.4 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 16.5 *Trade:* Pursuant to the Federal Export Administration Act and ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

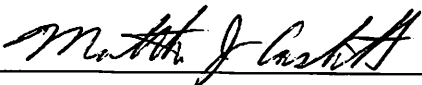
The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its contractor(s), subcontractor(s), and any agent of the contractor(s) or its subcontractor(s), acquires any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

- 16.6 *Lobbying:* Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. § 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress to a State legislature on

legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. §1352. Such disclosures are forwarded from tier to tier up to the recipient.

- 16.7 *Debarment:* LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC. 125.25 or 153.02 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.
- 16.8 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement, or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.9 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 16.10 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 16.11 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 16.12 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.
- 16.13 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original.

The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

<b>LPA: CITY OF MIDDLEBURG HEIGHTS</b>	<b>STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION</b>
By: 	By:
Matthew J. Castelli Mayor	Director
Date: 9-11-24	Date:



Attachment 1

**PROJECT BUDGET – SOURCES AND USES OF FUNDS**

USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS	
	Amount	%	SAC	Amount	%	SAC	Amount	%
PRELIMINARY DEVELOPMENT								
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS								
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION								
PROJECT CONSTRUCTION COSTS	\$63,636.40	20	4BG7	\$254,545.60	80	4TA7		
	\$6,363.60	20	LABR	\$25,454.40	80	LABR		
INSPECTION								
<b>TOTALS</b>	<b>\$70,000.00</b>			<b>\$280,000.00</b>				

Revision Date 10/27/2023

**Attachment 2**

**CUY MIDDLEBURG HTS TLCI FY2023**  
COUNTY-ROUTE-SECTION

**117560**  
PID NUMBER

**38806**  
AGREEMENT NUMBER

**TKYYFT9LK GK1**  
SAM UNIQUE ENTRY ID

**DIRECT PAYMENT OF CONSULTANT**

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's consultant shall be paid directly to the consultant in the pro-rata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this Agreement, and shall indicate that the payment is to be made to the consultant. In addition, the invoice must state the consultant's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the consultant and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the consultant, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (subrecipient). Accordingly, the LPA is responsible for tracking the receipts and payments and reporting the payments Federal (Receipts) Expenditures on the Schedule of Expenditures of Federal Awards (SEFA). An LPA that fails to report these funds accurately and timely may be required to restate the SEFA to comply with Federal reporting requirements.

We City of Middleburg Heights request that all payments for the Federal/State share of the  
(NAME OF LPA)

consultant costs of this agreement performed by \_\_\_\_\_  
(CONSULTANT'S NAME)

be paid directly to \_\_\_\_\_  
(CONSULTANT'S NAME)

LPA Name:	City of Middleburg Heights
Oaks Vendor ID:	
Mailing Address:	15700 Bagley Road
	Middleburg Heights, Ohio 44130
LPA signature:	

Consultant Name:	
Oaks Vendor ID:	
Mailing Address:	
ODOT Approval signature:	