

**Sylvania City Council**  
November 16, 2020

**7:30 p.m. Council Meeting**  
Agenda

1. Roll call. Mrs. Cappellini, Mr. Frye, Mr. Haynam, Mr. McCann, Mr. Richardson, Ms. Stough, Mrs. Westphal.
2. Pledge of Allegiance to the United States of America led by Mr. Frye.
3. Additions to the agenda.
4. Approval of the regular council meeting minutes of November 2, 2020.
5. COVID-19 Update.
6. Cushman Road Improvements Project.
  - a. Service Director's report on easement-5918 Cushman Rd.
  - b. Proposed Ordinance No. 98-2020, Accepting a Temporary Construction Easement from Donovan Ross for improvements of Cushman Road.
7. Luc-Silica Drive Bridge Replacement project.
  - a. Service Director's report on ODOT - LPA Local Let Project Agreement.
  - b. Proposed Ordinance No. 99-2020, Authorizing an agreement with the State of Ohio, Department of Transportation for Silica Drive Bridge Replacement project.
8. Luc-Monroe Street & Silica Drive Intersection Improvement project.
  - a. Service Director's report on ODOT - LPA Local Let Project Agreement.
  - b. Proposed Ordinance No. 100-2020, Authorizing an agreement with State of Ohio, Department of Transportation for the Monroe Street and Silica Drive Intersection Improvement Project.
9. Ohio Public Works Commission Grant Application.
  - a. Service Director's report on improvements on Monroe St. and Harroun Rd. and Harroun Road Pedestrian Hybrid Beacon.
  - b. Proposed Resolution No. 22-2020, A Resolution authorizing to file an OPWC Grant Application for the Monroe Street and Harroun Road Intersection Improvement Project.
10. Proposed Ordinance No. 101-2020, Authorizing to enter into a Ground Lease with the Sylvania Area Joint Recreation District for additional property and parking for Centennial Terrace.

11. Proposed Ordinance No. 102-2020, Authorizing the donation of 25 Safariland Holsters to the Avon Lake Police Department, 10 Safariland Holsters to the Walbridge Police Department, 10 Safariland to the Woodville Police Department, and 10 Safariland Holsters to the Creston Police Department.
12. Proposed Resolution No. 23-2020, A Resolution in support of Senate Bill 365 and to urge Governor DeWine and Ohio State Legislature to extend the deadline for holding public meetings electronically.
13. Plan Commission's recommendations on Zoning Ordinance Application No. SUP-1-2020 from David A. Sabo for a Zoning Change from "B-2", General Business District to "B-2/SUP", Special Use Permit for property located at 7600 W. Sylvania Avenue, Sylvania, Ohio 43560. Set Public hearing for December 21<sup>st</sup>.
14. Committee reports.
15. Committee referrals.

## **INFORMATION**

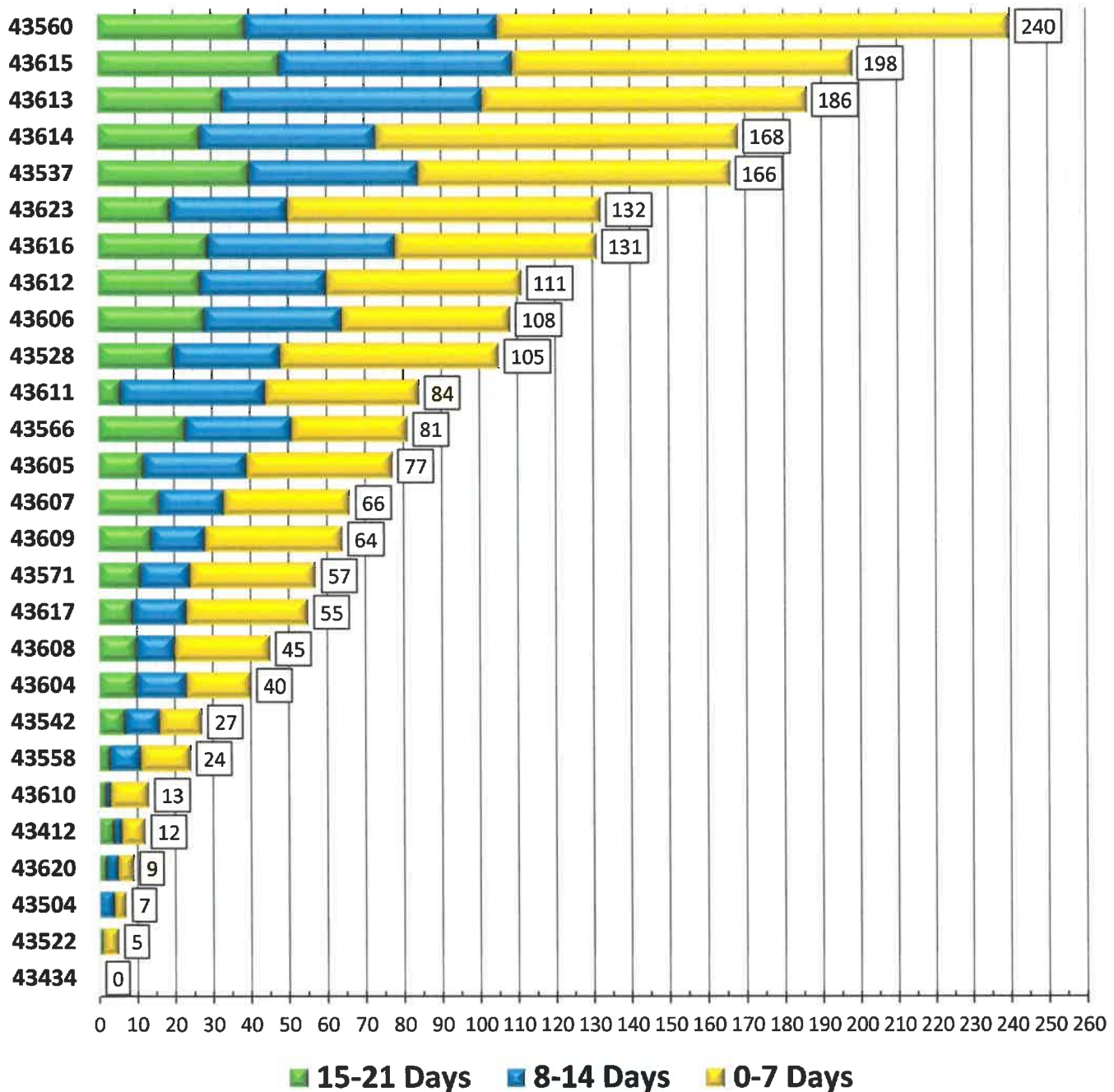
- A. October 2020 Bank Reconciliation.
- B. Board of Architectural Review minutes from November 10, 2020.
- C. Municipal Planning Commission minutes from November 10, 2020.

# Lucas County 3-Week Confirmed COVID Case Count by Zip Code

5

Preliminary data is reported current as of 11:20 am on 11-9-2020.

## Rolling 21 Day Confirmed Case Count by Test Result Date per Zip Code\*



\*The graph above identifies the zip code where each confirmed case lives. This does not mean cases were infected near their home due to sustained community spread, but it is possible. The graph only includes confirmed cases (probable cases excluded); cases are counted by earliest test result date available that falls within a 21 day window of the date and time data was reported; counts will vary daily as older cases drop off and new confirmed cases are reported.



DEPARTMENT OF PUBLIC SERVICE

KEVIN G. ALLER, PE DIRECTOR

November 16, 2020

To: The Mayor and Members of Sylvania City Council

Re: **Cushman Road Improvements Project**  
**Temporary Construction Easement – 5918 Cushman Road**

Dear Mr. Mayor and Council Members:

The construction plans for the Cushman Road Improvements Project are complete and the project is currently out for bid. Construction is scheduled for 2021.

In order to accommodate the improvements, the Service Department has been diligently working to obtain temporary construction easements from 25 parcels. The easements allow the City to right to enter and construct drainage swales on private property during construction. In addition, some of these easement areas require additional vegetation removals beyond the right-of-way. Our Parks & Forestry Department has conducted tree appraisals on these removals and have determined compensation values based on species and size.

We met with the 25<sup>th</sup>, and final, property owner to discuss the improvements and have come to an agreement to compensate for the easement and vegetation removals as follows:

- 5918 Cushman Road – Mr. Donovan Ross, \$1,035.

All easements and work agreements have been secured on the project. Procurement of this easement is known project expense and was included within the project budget.

We request approval of the easement and authorization for payment. Please contact me with any questions.

Sincerely,

Kevin G. Aller, P.E.  
Director of Public Service

## TEMPORARY EASEMENT FOR CONSTRUCTION PURPOSES

KNOW ALL MEN BY THESE PRESENTS:

That **Donovan Ross**, the Grantor, in consideration of one hundred sixty dollars (\$1,035), to him paid by the **City of Sylvania**, the Grantee, do hereby grant a temporary easement for a period of twelve (12) months to the said Grantee, its duly authorized agents or contractors, the proprietary right to enter, move material and operate the equipment essential to the construction of the Cushman Road Improvements Project, in, on, over and through the real estate in the City of Sylvania, Lucas County, Ohio, and legally described, Exhibit A, and drawn, Exhibit B as attached.

TO HAVE AND TO HOLD the same to said Grantee, its duly authorized agents or contractors, the proprietary right to enter upon and use the land above described, during the period beginning with the breaking of ground for the construction on the referenced improvement project and terminating when the completed work has been fully accepted by the City of Sylvania, or twelve (12) months from the date of entry on the subject easement area, whichever occurs first.

During construction, the said Grantee shall furnish reasonable access across the easement when such easement divides the property or the Grantor from the public roadway providing access thereto. Said Grantee shall provide that the easement area shall be restored to a condition similar to what exists prior to the commencement of construction, subject to the project construction plans.

The Grantor hereby covenants that he is the true and lawful Owner of said premises and is well seized of the same, and have good right and full power to bargain, sell and convey the same in the manner aforesaid.

IN WITNESS WHEREOF, the Grantor, **Donovan Ross**, has hereunto set his hand  
this 11/2/2020 day of November, 2020.

  
Donovan Ross

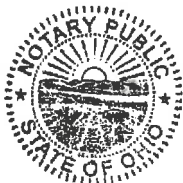
STATE OF OHIO

}SS

COUNTY OF LUCAS,

Before me, a Notary Public, in and for said County and State, personally appeared Marilyn Scuralli, who acknowledged the signing thereof to be her voluntary act and deed for the purpose therein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.



HANNAH LOCKARD  
Notary Public, State of Ohio  
My Comm. Expires 09/20/2023  
Recorded in Lucas County

Notary Public 

City of Sylvania, Ohio

By: \_\_\_\_\_

Craig. A. Stough, Mayor

By: \_\_\_\_\_

Toby Schroyer, Director of Finance

Approved:

\_\_\_\_\_  
Leslie B. Brining, Director of Law

Prepared by:  
Joseph E. Shaw  
City of Sylvania  
6730 Monroe Street  
Sylvania, Ohio 43560

**EXHIBIT A**

**TEMPORARY EASEMENT FOR THE PURPOSE OF PERFORMING THE WORK NECESSARY TO  
INSTALL A WATER LINE AND GRADE THE AREA FOR 12 MONTHS FROM THE DATE OF ENTRY  
BY THE CITY OF SYLVANIA**

Situated in the State of Ohio, County of Lucas, City of Sylvania, Southeast Quarter of Section 3, Town 9 South, Range 6 East, being part of a 0.647 acre tract of land conveyed to Donovan Ross, by deed recorded in Instrument Number 202009290042583 in the deed records of the Lucas County Recorder's Office and being part of Lot 156 in Haverford Subdivision as recorded in Volume 31, Pages 37 & 38, Lucas County Book of Plats of the Lucas County Recorder's Office and being more particularly described as follows:

Commencing at an iron pin found in the centerline of Right-of-Way of Cushman Road, said monument also being at Station 33+86.97 in the construction plans for the Cushman Road Improvements Project on file with the City of Sylvania;

Thence South 01°09'44" East a distance of 689.40' on the centerline of Right-of-Way of Cushman Road to a point, said point also being at Station 26+97.57;

Thence North 88°50'16" East a distance of 25.00' to the existing east Right-of-Way line of Cushman Road, said point being at the northwest corner of said Lot 156, said point also being at the southwest corner of Lot 157 of said Haverford Subdivision, said point also being 25.00' right of Station 26+97.57 and being the **TRUE POINT OF BEGINNING**;

Thence continuing North 88°50'16" East along the northerly line of said Lot 156, a distance of 5.00' to a point, said point also being 30.00' right of Station 26+97.57;

Thence South 01°09'44" East a distance of 112.00' to a point on the said grantor's south property line and south line of said Lot 156, said point also being on the north line of Lot 155 of said Haverford Subdivision, said point also being on the north property line of a parcel of land conveyed to Gary W. Romp, by deed recorded in Instrument Number 198504290361617 in the deed records of the Lucas County Recorder's Office, said point also being 30.00' right of station 25+85.57;

Thence South 88°50'16" West along the south line of said Lot 156, a distance of 5.00' to the existing east Right-of-Way line of Cushman Road, said point also being 25.00' right of station 25+85.57;

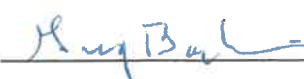
Thence North 01°09'44" West along the east Right-of-Way line of Cushman Road, a distance of 112.00' to the **TRUE POINT OF BEGINNING**.

Said Temporary Easement contains 0.013 acres of land, more or less, and is subject to all legal highways and easements of record.

Bearings used herein are based on an assumed meridian and are for the express purpose of showing angular measurement only.

The above described area is contained within Lucas County Auditor's tax district parcel number 82-07861.

This description was prepared by Gregory L. Boudouris, Registered Surveyor 8083 in the State of Ohio.

 10/1/2020

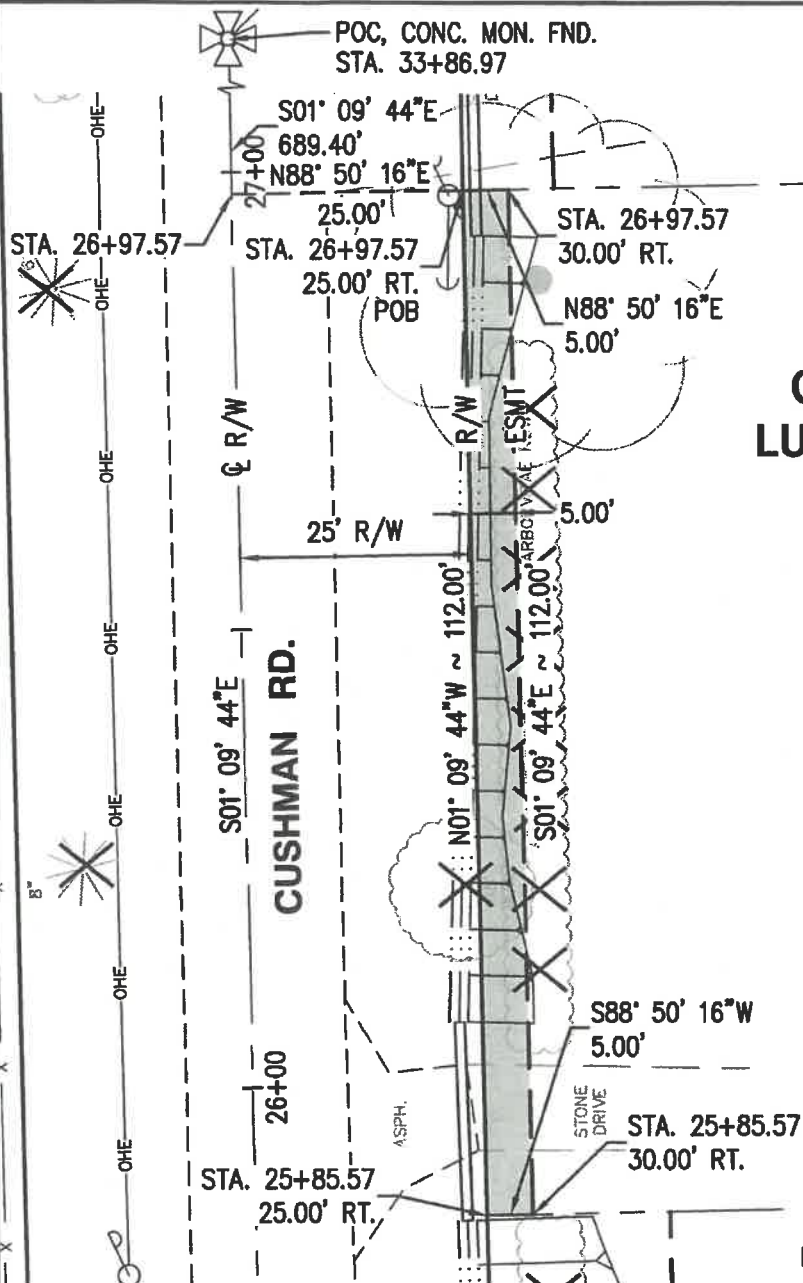
Gregory L. Boudouris  
Registered Surveyor of Ohio: No. 8083





**T9S, R6E  
SE QTR. SEC 3  
CITY OF SYLVANIA  
LUCAS COUNTY, OHIO**

DONOVAN ROSS  
5918 CUSHMAN RD.  
82-07861  
HAVERFORD LOT 156  
0.647 ACRES



**BASIS OF BEARINGS:**

THE BASIS OF BEARINGS USED HEREON ARE BASED ON AN ASSUMED MERIDIAN AND ARE FOR THE EXPRESS PURPOSE OF SHOWING ANGULAR MEASUREMENT.

**CERTIFICATION:**

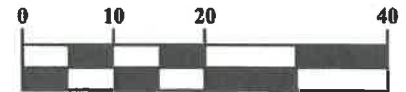
I HEREBY CERTIFY THAT THE FOREGOING WAS PREPARED FROM RECORDS AND SURVEY DATA PROVIDED BY THE CITY OF SYLVANIA, THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, CORRECTLY SHOWS THE LOCATION OF THE BOUNDARIES.

*Gregory L. Boudouris* 10/1/2020

GREGORY L. BOUDOURIS, P.E., P.S.  
PROFESSIONAL SURVEYOR NO. 8083

TEMPORARY EASEMENT  
(0.013 ACRES)

**GRAPHIC SCALE**



1 inch = 20 feet

SCALE: 1" = 20'

JOB NUMBER: 28-26

DRAWING DATE: 5-15-20

DRAWN BY: RGS

EXHIBIT: B

**EXHIBIT "B"**  
**TEMPORARY EASEMENT**  
**FOR 5918 CUSHMAN RD.**

**CUSHMAN ROAD IMPROVEMENTS**



**ESA**

**Engineers, Surveyors & Associates, LLC**

5353 Secor Rd., Toledo, Ohio, 43623 Phone (419) 475-9445



6b

**ORDINANCE NO. 98 -2020**

**ACCEPTING A TEMPORARY CONSTRUCTION EASEMENT FROM  
DONOVAN ROSS FOR THE IMPROVEMENT OF CUSHMAN ROAD;  
DEDICATING THE TEMPORARY EASEMENT FOR PUBLIC  
PURPOSES; APPROPRIATING FUNDS THEREFORE; AND  
DECLARING AN EMERGENCY.**

WHEREAS, plans for the improvement of Cushman Road in the City of Sylvania, Ohio have been completed; and,

WHEREAS, the project includes re-establishing and re-profiling the front yard drainage swales including flatter and more gradual side slopes to ease property maintenance; and,

WHEREAS, Mr. Donovan Ross is entitled to receive payment of just compensation representing the fair market value of the temporary easement after an appraisal of those rights and he has executed and delivered a grant of temporary easement to this City for which he will be paid the sum of One Thousand Thirty-Five Dollars (\$1,035.00), a copy of which grant of temporary easement is attached hereto as "Exhibit A"; and,

WHEREAS, said grant of temporary easement is presented to this Council for acceptance and for appropriation of funds and authorization of payment thereof to the Grantor.

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Sylvania, Lucas County, Ohio, \_\_\_\_\_ members elected thereto concurring:

SECTION 1. That the temporary easement as to executed and tendered as described on "Exhibit A" be, and the same hereby is, accepted from Donovan Ross, the grantor therein.

SECTION 2. That the temporary easement area identified and described in said temporary easement as set forth on "Exhibit A" be, and the same hereby is, dedicated for the respective public purposes expresses in said temporary easement.

SECTION 3. That the Director of Law is hereby directed to deliver the recorded temporary easement document to the Director of Finance for retention by him as custodian of the records of this City.

SECTION 4. That, to provide funds for payment to the Grantor of said temporary easement hereby accepted, there is hereby appropriated from the **WATER FUND**, from funds therein not heretofore appropriated, to **Account No. 701-7525-53501 – Utility Improvements**, the sum of One Thousand Thirty-Five Dollars (\$1,035.00).

SECTION 5. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 6. That the Clerk of Council is hereby directed to post a copy of this Ordinance in the Office of the Clerk of Council in the Municipal Building pursuant to ARTICLE III, Section 12, of the Charter of this City.

SECTION 7. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, property and welfare and for the further reason that the improvement of Cushman Road should proceed as soon as possible and accordingly the acquisition of the necessary temporary easements should proceed forthwith and therefore this Ordinance should be effective immediately. Provided this Ordinance receives the affirmative vote of five (5) or more members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force thirty (30) days after it is approved by the Mayor or as otherwise provided by the Charter.

Vote dispensing with the second and third readings:            Yeas \_\_\_\_\_ Nays \_\_\_\_\_

Passed, \_\_\_\_\_, 2020, as an emergency measure.

ATTEST:

\_\_\_\_\_  
President of Council  
APPROVED AS TO FORM:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Director of Law

APPROVED:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

7a



DEPARTMENT OF PUBLIC SERVICE

KEVIN G. ALLER, PE DIRECTOR

November 16, 2020

To: The Mayor and Members of Sylvania City Council

Re: **LUC-SILICA DRIVE BRIDGE REPLACEMENT (PID 111563)**  
**ODOT LPA LOCAL LET PROJECT AGREEMENT**

Dear Mr. Mayor and Council Members:

This project consists of replacing both the vehicular and pedestrian bridges on Silica Drive over Ten Mile Creek with one new structure accommodating both modes of traffic. The replacement structure would be a three-span pre-stressed concrete box beam with a reinforced concrete deck superstructure. The total cost of the project is estimated to be \$1,539,022 with construction scheduled for 2023.

In October 2019 the Service Department was notified that the Ohio Municipal Bridge Program (OMBP) application was successful with the City securing \$1,209,333 in federal grant assistance towards the construction cost of the project. The remaining project expenses are to be locally funded. We anticipate a future Ohio Public Works Commission (OPWC) application will be requested that will provide further funding assistance towards the locally funded portion of the project.

Any locally administered projects that use federal monies require an Agreement between ODOT and the Local Public Agency (LPA). The Agreement outlines the relationship between ODOT and the LPA during the project and includes guidelines on funding participation, overall project development, environmental commitments, and right-of-way acquisition. ODOT is requesting approval of the enclosed Agreement with the City prior to starting engineering design.

We would request approval of this Agreement. Please call with any questions.

Sincerely,

Kevin G. Aller, P.E.  
Director of Public Service

7b

**ORDINANCE NO. 99 -2020**

**AUTHORIZING THE MAYOR AND DIRECTOR OF FINANCE TO ENTER INTO AN AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION ON BEHALF OF THE CITY OF SYLVANIA FOR THE SILICA DRIVE BRIDGE REPLACEMENT PROJECT; AND DECLARING AN EMERGENCY.**

WHEREAS, Ordinance No. 13-2019, passed February 19, 2019, accepted the proposal of DGL Consulting Engineers to perform a preliminary structure study for the Silica Drive Vehicular Bridge over Ten Mile Creek Replacement Project; and,

WHEREAS, based on the results of the study, DGL recommended that both the vehicular and pedestrian bridges be replaced with one new structure that would accommodate both vehicular and pedestrian traffic; and,

WHEREAS, Resolution No. 8-2019, passed July 15, 2019, authorized the Mayor and Director of Finance to file a grant application with the Ohio Department of Transportation Municipal Bridge Program for the Silica Drive over Ten Mile Creek Bridge Replacement Project; and,

WHEREAS, in October, 2019, the Director of Public Service was notified that the grant application was successful with the City securing \$1,209,333 in federal grant assistance toward the construction costs of the project; and,

WHEREAS, the total cost of the project is estimated to be \$1,539,022 with construction scheduled for 2023; and,

WHEREAS, the Director of Public Service also intends to apply for an Ohio Public Works Commission ("OPWC") grant to offset the remaining cost of the project; and,

WHEREAS, ODOT requires an Agreement between the Local Public Agency for any locally administered projects that receive federal funds; and,

WHEREAS, the Director of Public Service, by report dated November 16, 2020, has recommended approval of the Agreement between the Ohio Department of Transportation and the City of Sylvania, Ohio, a copy of which is attached hereto as "Exhibit A."

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Sylvania, Lucas County, Ohio, \_\_\_\_\_ members elected thereto concurring:

SECTION 1. That the Mayor and Director of Finance be, and they hereby are, authorized to enter into, on behalf of this City, an Agreement with the Ohio Department of Transportation for the Silica Drive Bridge Replacement Project, a copy of which is attached.

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

SECTION 3. That the Clerk of Council is hereby directed to post a copy of this Ordinance in the Office of the Clerk of Council in the Municipal Building pursuant to ARTICLE III, Section 12, of the Charter of this City.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, property and welfare and for the further reason that the Agreement should be entered into immediately so that the design of the Silica Drive Bridge Replacement Project is not delayed. Provided this Ordinance receives the affirmative vote of five (5) or more members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force thirty (30) days after it is approved by the Mayor or as otherwise provided by the Charter.

Vote dispensing with the second and third readings: Yeas \_\_\_\_\_ Nays \_\_\_\_\_

Passed, \_\_\_\_\_, 2020 as an emergency measure.

\_\_\_\_\_  
President of Council

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Director of Law

APPROVED:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

**CFDA 20.205**

## **LPA FEDERAL LOCAL-LET PROJECT AGREEMENT**

**THIS AGREEMENT** is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the City of Sylvania hereinafter referred to as the LPA, 2125 Richards Road, Ottawa Hills, OH 43606

### **1. PURPOSE**

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as 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** (hereinafter referred to as 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 The Muni-Bridge funded project to replace the Silica St bridge (SFN: 4862473 ) over Ten Mile Creek within the City of Sylvania) 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 for the local 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. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105;
  - b. Federal Funding Accountability and Transparency Act of 2006 (FFATA);
  - c. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
  - d. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
  - e. State of Ohio Department of Transportation Construction and Material Specifications Manual (applicable to dates of PROJECT).
- 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**

- 3.1 The total cost for the PROJECT is estimated to be \$ 1,272,981 as set forth in Attachment 1. ODOT shall provide to the LPA 95 percent of the eligible costs, up to a maximum of \$ 1,209,333

\_ in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. 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.

- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100 percent Locally-funded work, cost overruns and contractor claims.

#### 4. PROJECT DEVELOPMENT AND DESIGN

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

- 4.2 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.

- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall (option one: follow its own formally written set of local design standards or option two: make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication). Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: [www.dot.state.oh.us/drrc/Pages/default.aspx](http://www.dot.state.oh.us/drrc/Pages/default.aspx)

- 4.4 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 sections 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: [www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT](http://www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT)

- 4.5 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.

- 4.6 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 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, 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 and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.

- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-Qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at [www.dot.state.oh.us/CONTRACT](http://www.dot.state.oh.us/CONTRACT). 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 guidelines.

- 5.3 ODOT shall be responsible for the review of all environmental documents and reports and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the PROJECT.
- 5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a NOI to Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-Let LPA projects, they may use an alternative post-construction BMP criteria with Ohio EPA approval.

## 6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All right-of-way 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 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way 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 perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective right of way 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. Likewise, a consultant hired to perform right of way acquisition work is not permitted to perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3 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 guidelines.
- 6.4 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 State rules, policies and guidelines 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.
- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way 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 Right of Way Certification, 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 the 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.

- 6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT 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. 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.
- 6.7 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.
- 6.8 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.
- 6.9 Consistent with sections 10.1 and 10.4 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 requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 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. ADVERTISING, SALE AND AWARD

- 7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.
- 7.4 The LPA must incorporate ODOT's LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts as well as appropriate subcontracts and purchase orders.

- 7.5 The LPA shall require the contractor to be enrolled in, and maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.
- 7.6 Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. In accordance with FHWA Form 1273 Section VII and 23 CFR 635.116, the "prime" contractor must perform no less than 30 percent of the total original contract price. The 30-percent prime requirement does not apply to design-build contracts.
- 7.7 In accordance with ORC Section 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100 percent locally-funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100 percent locally-funded work product.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC Section 9.24, that the contractor has taken the appropriate remedial steps required under ORC Section 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <https://ohioauditor.gov/findings.html> . If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.
- 7.9 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.10 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.
- 7.11 After analyzing all bids for completeness, accuracy, and responsiveness, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this Agreement, if applicable.
8. CONSTRUCTION CONTRACT ADMINISTRATION
- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this Agreement.

- 8.2 The LPA must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and DBE, if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of Appendix J in the LATP Manual of Procedures.
- 8.3 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.
- 8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA requests reimbursement, it must provide documentation of payment for the project costs requested. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.
- 8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.
- 8.6 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the ORC may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.
- 8.7 Payment or reimbursement to the LPA shall be submitted to:
- |                    |
|--------------------|
| Joseph Shaw        |
| 6730 Monroe St     |
| Sylvania, OH 43560 |
- 8.8 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all Federal funding commitments.

- 8.9 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and, if necessary, unilaterally modify any other term of this Agreement in order to preserve its Federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT 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.
- 8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, arising out of, or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.
- 8.11 After completion of the PROJECT, and in accordance with Title 23 United States Code 116 and applicable provisions of the ORC, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies, and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.
- 8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within 6 months of the physical completion date of the PROJECT. All costs must be submitted within 6 months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the 6-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.

## 9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT 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, as required by ORC section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2 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. 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 the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

## 10. NONDISCRIMINATION

- 10.1 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.

10.2 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.

10.3 The LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this PROJECT for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the **ORC**.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. Prior to executing the contract with the contractor, and in order for ODOT to encumber the Federal/State funds, the contractor must demonstrate compliance with the DBE Utilization Plan and Good Faith Efforts requirements.

#### **GOOD FAITH EFFORTS (GFEs)**

In the event that the DBE contract goal established by ODOT is not met on a project, the Contractor shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

The Contractor shall demonstrate its GFEs by submitting information including but not limited to the following to the LPA:

- (1) All written quotes received from certified DBE firms;
- (2) All written (including email) communications between the Contractor and DBE firms;
- (3) All written solicitations to DBE firms, even if unsuccessful;
- (4) Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract;
- (5) Phone logs of communications with DBE firms.

The LPA will send the GFE documentation including their recommendation to ODOT at the following address:

Office of Small & Disadvantaged Business Enterprise  
The Ohio Department of Transportation  
1980 West Broad Street, Mail Stop 3270  
Columbus, Ohio 43223

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the Contractor has made adequate good faith efforts to meet the goal. ODOT will review the GFE documentation and the LPA's recommendation and issue a written determination on whether adequate GFEs have been demonstrated by the Contractor.

The Contractor may request administrative reconsideration within two (2) days of being informed that it did not perform a GFE. The Contractor must make this request in writing to the following official:

Ohio Department of Transportation  
Division of Chief Legal Counsel  
1980 West Broad Street, Mail Stop 1500  
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the Contractor did not document sufficient good faith effort.

As part of this reconsideration, the Contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the Contractor a written decision on reconsideration explaining the basis for finding that the Contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable.

ODOT may issue sanctions if the Contractor fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort. ODOT may impose any of the following sanctions:

- (a) letter of reprimand;
- (b) contract termination; and/or
- (c) other remedies available by law including administrative suspension.

Factors to be considered in issuing sanctions include, but are not limited to:

- (a) the magnitude and the type of offense;
- (b) the degree of the Consultant's culpability;
- (c) any steps taken to rectify the situation;
- (d) the Contractor's record of performance on other projects including, but not limited to:
  - (1) annual DBE participation over DBE goals;
  - (2) annual DBE participation on projects without goals;
  - (3) number of complaints ODOT has received from DBEs regarding the Contractor;
  - and,
  - (4) the number of times the Contractor has been previously sanctioned by ODOT; and,
- (e) Whether the Contractor falsified, misrepresented, or withheld information.

10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest agrees as follows:

- (a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as



they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

- (b) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.
- (c) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.
- (d) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- (e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
  - (1) withholding of payments to the LPA under the contract until the LPA complies, and/or
  - (2) cancellation, termination or suspension of the contract, in whole or in part.
- (f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

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

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors 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 consultants and contractors 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.
- 11.2 The LPA shall not allow its consultants or contractors 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 or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor 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.
- 11.3 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.

## 12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

- 12.1 Neglect 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 failure or neglect are 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.
- 12.2 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, 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 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.
- 12.3 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 consultants or contractors. 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.

- 12.4 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.
- 12.5 This Agreement and obligation of the parties herein may be terminated by either party with thirty days written notice to the other party. In the event of termination, the LPA shall cease 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.
- 12.3. In the event of termination 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.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 13.1 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 section 126.30 of the ORC.
- 13.2 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. NOTICE

- 14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Joseph Shaw, City Administrator	Aaron Behrman, P.E.
City of Sylvania	Ohio Department of Transportation
6730 Monroe St	317 E. Poe Rd
Sylvania, Ohio 43560	Bowling Green, OH 43402
jshaw@cityofsylvania.com	aaron.behrman@dot.ohio.gov

15. GENERAL PROVISIONS

- 15.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs:*

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below: *[LPA official must initial the option selected.]*

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**1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.**

- (A) The LPA **does not** currently maintain an ODOT approved federally compliant time-tracking system<sup>1</sup>, **and**
- (B) The LPA **does not** intend to have a federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
- (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.

☐

**2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.<sup>2</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B) The LPA **does not** currently have, and **does not** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

☐

**3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.<sup>3</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

<sup>1</sup> A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.

<sup>2</sup> [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 percent of modified total direct costs (MTDC) per 2 CFR §200.414. The definition of MTDC is provided in the regulation at 2 CFR §200.68. Any questions regarding the calculation of MTDC for a specific project should be directed to the Office of Local Programs. Further, regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 10-percent de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

<sup>3</sup> [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.



**4. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.<sup>4</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
- (C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LATP Manual of Procedures.

15.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 15.12 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.

15.3 **Financial Reporting and Audit Requirements:** One or more phases of this Agreement include a sub award of Federal funds to the LPA. Accordingly, the LPA must comply with the financial reporting and audit requirements of 2 CFR Part 200.

All non-federal entities, including ODOT's LPA sub recipients, that have aggregate federal awards 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.

Federal and State funds expended to or on behalf of a sub recipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (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 expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with section 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

<sup>4</sup> [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

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

- 15.4 *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 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 contract.

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.

- 15.5 *Ohio Ethics Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.
- 15.6 *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.
- 15.7 *Trade:* Pursuant to the federal Export Administration Act and Ohio Revised Code 9.76(B), the LPA and any contractor or sub-contractor 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 Contractors, subcontractors, and any agent of the Contractor or its subcontractors, acquire 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.

- 15.8 *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.

- 15.9 **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 R.C. 153.02 or R.C. 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.
- 15.10 **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.
- 15.11 **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.
- 15.12 **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.
- 15.13 **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.
- 15.14 **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.
- 15.15 **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 Sylvania</b>	<b>STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION</b>
By:	By:
Title: Craig Stough Mayor	Jack Marchbanks Director
Date:	Date:



**Attachment 1**

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

SOURCES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
USES	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT										
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS										
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION										
PROJECT CONSTRUCTION COSTS	55,347.00	5	LNTP	1,051,593.00	95	4TB7				1,106,940
INSPECTION	8,302.05	5	LNTP	157,738.95	95	4TB7				166,041
TOTALS	63,649.05			1,209,331.95						1,272,981

Fed Const Max = \$1,209,333 @95% 4R87

## Attachment 2

**LUC SILICA ST BRDG**  
**RPLMT-SYLVANIA**  
COUNTY-ROUTE-SECTION

111563  
PID NUMBER

34353  
AGREEMENT NUMBER

### DIRECT PAYMENT OF CONTRACTOR

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 contractor shall be paid directly to the contractor 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 contractor. In addition, the invoice must state the contractor's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the contractor, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (sub recipient). 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 (INSERT NAME OF LPA) request that all payments for the Federal/State share of the construction costs of this Agreement performed by (CONTRACTOR'S NAME) be paid directly to (CONTRACTOR'S NAME).

VENDOR Name:	Error! Reference source not found.
Oaks Vendor ID:	0000000000
Mailing Address:	Error! Reference source not found.
	Error! Reference source not found.
LPA signature:	

LPA Name:	Error! Reference source not found.
Oaks Vendor ID:	0000000000
Mailing Address:	Error! Reference source not found.
	Error! Reference source not found.
ODOT Approval signature:	

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DEPARTMENT OF PUBLIC SERVICE

KEVIN G. ALLER, PE DIRECTOR

November 16, 2020

To: The Mayor and Members of Sylvania City Council

Re: **LUC-MONROE STREET & SILICA DRIVE INTERSECTION IMPROVEMENTS (PID 107489)**  
**ODOT LPA LOCAL LET PROJECT AGREEMENT**

Dear Mr. Mayor and Council Members:

This project consists of implementing congestion relief measures to improve level of service (LOS) for the Monroe Street and Silica Drive intersection. Specifically:

- Turn lanes will be added to the eastbound and northbound approaches.
- A third eastbound lane of traffic will be built from west of Silica Drive to Main Street.
- Full traffic signal infrastructure upgrade.

The total cost of the project is estimated to be \$2,986,483 with construction scheduled for 2023.

In January 2018 the Service Department was notified that the Congestion Mitigation and Air Quality (CMAQ) application was successful with the City securing up to \$2,373,500 in federal grant assistance towards the construction cost of the project. The remaining project expenses are to be locally funded. We anticipate a future Ohio Public Works Commission (OPWC) application will be requested that will provide further funding assistance towards the locally funded portion of the project.

Any locally administered projects that use federal monies require an Agreement between ODOT and the Local Public Agency (LPA). The Agreement outlines the relationship between ODOT and the LPA during the project and includes guidelines on funding participation, overall project development, environmental commitments, and right-of-way acquisition. ODOT is requesting approval of the enclosed Agreement with the City prior to starting engineering design.

We would request approval of this Agreement. Please call with any questions.

Sincerely,

Kevin G. Aller, P.E.

Director of Public Service

**ORDINANCE NO. 100 -2020****AUTHORIZING THE MAYOR AND DIRECTOR OF FINANCE TO ENTER INTO AN AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION ON BEHALF OF THE CITY OF SYLVANIA FOR THE MONROE STREET AND SILICA DRIVE INTERSECTION IMPROVEMENT PROJECT; AND DECLARING AN EMERGENCY.**

WHEREAS, Resolution No. 4-2017, passed May 15, 2017, authorized the Mayor and Director of Finance to prepare and submit an application with the Ohio Statewide Urban Congestion Mitigation/Air Quality Program for the Monroe Street and Silica Drive Intersection Improvement Project; and,

WHEREAS, in January, 2018, the Director of Public Service was notified that the grant application was successful with the City securing up to \$2,373,500 in federal grant assistance toward the construction costs of the project; and,

WHEREAS, the total cost of the project is estimated to be \$2,986,483 with construction scheduled for 2023; and,

WHEREAS, the Director of Public Service also intends to apply for an Ohio Public Works Commission ("OPWC") grant to offset the remaining cost of the project; and,

WHEREAS, ODOT requires an Agreement between the Local Public Agency for any locally administered projects that receive federal funds; and,

WHEREAS, the Director of Public Service, by report dated November 16, 2020, has recommended approval of the Agreement between the Ohio Department of Transportation and the City of Sylvania, Ohio, a copy of which is attached hereto as "Exhibit A."

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Sylvania, Lucas County, Ohio, \_\_\_\_\_ members elected thereto concurring:

SECTION 1. That the Mayor and Director of Finance be, and they hereby are, authorized to enter into, on behalf of this City, an Agreement with the Ohio Department of

Transportation for the Monroe Street and Silica Intersection Improvement Project, a copy of which is attached.

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

SECTION 3. That the Clerk of Council is hereby directed to post a copy of this Ordinance in the Office of the Clerk of Council in the Municipal Building pursuant to ARTICLE III, Section 12, of the Charter of this City.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, property and welfare and for the further reason that the Agreement should be entered into immediately so that the design of the Monroe Street and Silica Drive Intersection Improvement Project is not delayed. Provided this Ordinance receives the affirmative vote of five (5) or more members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force thirty (30) days after it is approved by the Mayor or as otherwise provided by the Charter.

Vote dispensing with the second and third readings: Yeas \_\_\_\_\_ Nays \_\_\_\_\_

Passed, \_\_\_\_\_, 2020 as an emergency measure.

\_\_\_\_\_  
President of Council

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Director of Law

APPROVED:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

CFDA 20.205

## LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

**THIS AGREEMENT** is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the City of Sylvania hereinafter referred to as the LPA, 6730 Monroe St., Sylvania, Ohio 43560

### 1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as 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** (hereinafter referred to as 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 The CMAQ fund project to construct intersection improvements at Monroe St and Silica Drive, including an additional EB lane on Monroe St from Silica Drive to Main Street (hereinafter referred to as the 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 for the local 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. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105;
  - b. Federal Funding Accountability and Transparency Act of 2006 (FFATA);
  - c. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
  - d. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
  - e. State of Ohio Department of Transportation Construction and Material Specifications Manual (applicable to dates of PROJECT).
- 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

- 3.1 The total cost for the PROJECT is estimated to be \$ 3,263,562 as set forth in Attachment 1. ODOT shall provide to the LPA 80 percent of the eligible costs, up to a maximum of \$ 2,373,500 in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. 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.
- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100 percent Locally-funded work, cost overruns and contractor claims.

### 4. PROJECT DEVELOPMENT AND DESIGN

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.
- 4.2 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.
- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall (option one: follow its own formally written set of local design standards or option two: make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication). Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: [www.dot.state.oh.us/drrc/Pages/default.aspx](http://www.dot.state.oh.us/drrc/Pages/default.aspx)
- 4.4 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 sections 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: [www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT](http://www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT)
- 4.5 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.
- 4.6 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 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, 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 and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.

- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-Qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at [www.dot.state.oh.us/CONTRACT](http://www.dot.state.oh.us/CONTRACT). 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 guidelines.
- 5.3 ODOT shall be responsible for the review of all environmental documents and reports and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the PROJECT.
- 5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a NOI to Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-Let LPA projects, they may use an alternative post-construction BMP criteria with Ohio EPA approval.
6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION
- 6.1 All right-of-way 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 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way 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 perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective right of way 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. Likewise, a consultant hired to perform right of way acquisition work is not permitted to perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3 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 guidelines.
- 6.4 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 State rules, policies and guidelines 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.



- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way 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 Right of Way Certification, 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 the 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.
- 6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT 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. 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.
- 6.7 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.
- 6.8 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.
- 6.9 Consistent with sections 10.1 and 10.4 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 requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 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. ADVERTISING, SALE AND AWARD
- 7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.
- 7.4 The LPA must incorporate ODOT's LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices

that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts as well as appropriate subcontracts and purchase orders.

- 7.5 The LPA shall require the contractor to be enrolled in, and maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.
- 7.6 Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. In accordance with FHWA Form 1273 Section VII and 23 CFR 635.116, the "prime" contractor must perform no less than 30 percent of the total original contract price. The 30-percent prime requirement does not apply to design-build contracts.
- 7.7 In accordance with ORC Section 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100 percent locally-funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100 percent locally-funded work product.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC Section 9.24, that the contractor has taken the appropriate remedial steps required under ORC Section 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <https://ohioauditor.gov/findings.html> . If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.
- 7.9 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.10 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.
- 7.11 After analyzing all bids for completeness, accuracy, and responsiveness, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this Agreement, if applicable.

## 8. CONSTRUCTION CONTRACT ADMINISTRATION

- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71. Any construction contract administration or engineering costs incurred by

the LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this Agreement.

- 8.2 The LPA must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and DBE, if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of Appendix J in the LATP Manual of Procedures.
- 8.3 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.
- 8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA requests reimbursement, it must provide documentation of payment for the project costs requested. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.
- 8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.
- 8.6 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the ORC may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.
- 8.7 Payment or reimbursement to the LPA shall be submitted to:
- |                      |
|----------------------|
| Joseph Shaw          |
| 6730 Monroe St.,     |
| Sylvania, Ohio 43560 |
- 8.8 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated

suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all Federal funding commitments.

- 8.9 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and, if necessary, unilaterally modify any other term of this Agreement in order to preserve its Federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT 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.
- 8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, arising out of, or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.
- 8.11 After completion of the PROJECT, and in accordance with Title 23 United States Code 116 and applicable provisions of the ORC, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies, and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.
- 8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within 6 months of the physical completion date of the PROJECT. All costs must be submitted within 6 months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the 6-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.

## 9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT 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, as required by ORC section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2 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. 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 the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

10. **NONDISCRIMINATION**

- 10.1 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.
- 10.2 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.
- 10.3 The LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this PROJECT for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the **ORC**.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. Prior to executing the contract with the contractor, and in order for ODOT to encumber the Federal/State funds, the contractor must demonstrate compliance with the DBE Utilization Plan and Good Faith Efforts requirements.

**GOOD FAITH EFFORTS (GFEs)**

In the event that the DBE contract goal established by ODOT is not met on a project, the Contractor shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

The Contractor shall demonstrate its GFEs by submitting information including but not limited to the following to the LPA:

- (1) All written quotes received from certified DBE firms;
- (2) All written (including email) communications between the Contractor and DBE firms;
- (3) All written solicitations to DBE firms, even if unsuccessful;

- (4) Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract;
- (5) Phone logs of communications with DBE firms.

The LPA will send the GFE documentation including their recommendation to ODOT at the following address:

Office of Small & Disadvantaged Business Enterprise  
The Ohio Department of Transportation  
1980 West Broad Street, Mail Stop 3270  
Columbus, Ohio 43223

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the Contractor has made adequate good faith efforts to meet the goal. ODOT will review the GFE documentation and the LPA's recommendation and issue a written determination on whether adequate GFEs have been demonstrated by the Contractor.

The Contractor may request administrative reconsideration within two (2) days of being informed that it did not perform a GFE. The Contractor must make this request in writing to the following official:

Ohio Department of Transportation  
Division of Chief Legal Counsel  
1980 West Broad Street, Mail Stop 1500  
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the Contractor did not document sufficient good faith effort.

As part of this reconsideration, the Contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the Contractor a written decision on reconsideration explaining the basis for finding that the Contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable.

ODOT may issue sanctions if the Contractor fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort. ODOT may impose any of the following sanctions:

- (a) letter of reprimand;
- (b) contract termination; and/or
- (c) other remedies available by law including administrative suspension.

Factors to be considered in issuing sanctions include, but are not limited to:

- (a) the magnitude and the type of offense;
- (b) the degree of the Consultant's culpability;
- (c) any steps taken to rectify the situation;
- (d) the Contractor's record of performance on other projects including, but not limited to:
  - (1) annual DBE participation over DBE goals;
  - (2) annual DBE participation on projects without goals;
  - (3) number of complaints ODOT has received from DBEs regarding the Contractor; and,
  - (4) the number of times the Contractor has been previously sanctioned by ODOT; and,
- (e) Whether the Contractor falsified, misrepresented, or withheld information.

10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest agrees as follows:

- (a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

- (b) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.
- (c) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.
- (d) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- (e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
  - (1) withholding of payments to the LPA under the contract until the LPA complies, and/or
  - (2) cancellation, termination or suspension of the contract, in whole or in part.
- (f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such

litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors 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 consultants and contractors 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.
- 11.2 The LPA shall not allow its consultants or contractors 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 or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor 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.
- 11.3 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.

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

- 12.1 Neglect 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 failure or neglect are 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.
- 12.2 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, 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 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.
- 12.3 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 consultants or contractors.



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.

- 12.4 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.
- 12.5 This Agreement and obligation of the parties herein may be terminated by either party with thirty days written notice to the other party. In the event of termination, the LPA shall cease 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.
- 12.3. In the event of termination 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.

### 13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 13.1 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 section 126.30 of the ORC.
- 13.2 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. NOTICE

- 14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Joseph Shaw, City Administrator	Aaron Behrman, P.E.
City of Sylvania	Ohio Department of Transportation
6730 Monroe St	317 E. Poe Rd
Sylvania, Ohio 43560	Bowling Green, OH 43402
jshaw@cityofsylvania.com	Aaron.behrman@dot.ohio.gov

15. GENERAL PROVISIONS

15.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs:*

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below: *[LPA official must initial the option selected.]*

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**1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.**

- (A) The LPA **does not** currently maintain an ODOT approved federally compliant time-tracking system<sup>1</sup>, **and**
- (B) The LPA **does not** intend to have a federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
- (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.

☐

**2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.<sup>2</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B) The LPA **does not** currently have, and **does not** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

☐

**3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.<sup>3</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

<sup>1</sup> A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.

<sup>2</sup> [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 percent of modified total direct costs (MTDC) per 2 CFR §200.414. The definition of MTDC is provided in the regulation at 2 CFR §200.68. Any questions regarding the calculation of MTDC for a specific project should be directed to the Office of Local Programs. Further, regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 10-percent de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

<sup>3</sup> [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is



**4. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.<sup>4</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, *and*
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, *and*
- (C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LATP Manual of Procedures.

- 15.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 15.12 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.
- 15.3 *Financial Reporting and Audit Requirements:* One or more phases of this Agreement include a sub award of Federal funds to the LPA. Accordingly, the LPA must comply with the financial reporting and audit requirements of 2 CFR Part 200.

All non-federal entities, including ODOT's LPA sub recipients, that have aggregate federal awards 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.

Federal and State funds expended to or on behalf of a sub recipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (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 expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with section 2 CFR §200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

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applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.

- 4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

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

- 15.4 *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 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 contract.

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.

- 15.5 *Ohio Ethics Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.
- 15.6 *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.
- 15.7 *Trade:* Pursuant to the federal Export Administration Act and Ohio Revised Code 9.76(B), the LPA and any contractor or sub-contractor 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 Contractors, subcontractors, and any agent of the Contractor or its subcontractors, acquire 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.

- 15.8 *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.

- 15.9 *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 R.C. 153.02 or R.C. 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.
- 15.10 *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.
- 15.11 *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.
- 15.12 *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.
- 15.13 *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.
- 15.14 *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.
- 15.15 *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 Sylvania</b>	<b>STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION</b>
By:	By:
Title: Craig Stough Mayor	Jack Marchbanks Director
Date:	Date:

**Attachment 1**

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

SOURCES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
USES	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT										
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS										
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION										
PROJECT CONSTRUCTION COSTS	593,375	20	LNTP	2,373,500	80	4TB7				2,966,875
INSPECTION	296,687	100	LNTP							296,687
TOTALS	890,062			2,373,500						3,263,562

Max Fed Cap = \$2,373,500 @ 80% SAC 4TC7

## Attachment 2

**LUC MONROE ST & SILICA**  
**DR UPGRD**

COUNTY-ROUTE-SECTION

107489

PID NUMBER

31817

AGREEMENT NUMBER

### DIRECT PAYMENT OF CONTRACTOR

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 contractor shall be paid directly to the contractor 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 contractor. In addition, the invoice must state the contractor's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the contractor, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (sub recipient). 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 (INSERT NAME OF LPA) request that all payments for the Federal/State share of the construction costs of this Agreement performed by (CONTRACTOR'S NAME) be paid directly to (CONTRACTOR'S NAME).

VENDOR Name:	Error! Reference source not found.
Oaks Vendor ID:	0000000000
Mailing Address:	Error! Reference source not found.
	Error! Reference source not found.
LPA signature:	

LPA Name:	Error! Reference source not found.
Oaks Vendor ID:	0000000000
Mailing Address:	Error! Reference source not found.
	Error! Reference source not found.
ODOT Approval signature:	

9a



DEPARTMENT OF PUBLIC SERVICE

KEVIN G. ALLER, PE DIRECTOR

November 16, 2020

To: The Mayor and Members of Sylvania City Council

Re: **OPWC GRANT APPLICATION**  
**LUC-CR-4-9.77 (PID 109598) & HARROUN ROAD PEDESTRIAN HYBRID BEACON**

Dear Mr. Mayor and Council Members:

In 2018, the Service Department applied for ODOT Highway Safety Improvement Program (HSIP) funds to financially assist with planned improvements on Monroe Street and Harroun Road (LUC-CR-4-9.77, PID 109598). As a reminder, this project will widen westbound Monroe Street within the project limits, provide additional turning lane capacities to Harroun Road, improve intersection geometry deficiencies, and fully upgrade both traffic signals. The City was successful with this application and was awarded \$1,677,766. The total cost of the project is \$2,633,729.

With design underway and construction scheduled for 2022, the Service Department would like to supplement the HSIP funds by applying for an Ohio Public Works Commission (OPWC) grant. In addition, we are requesting a second project be added to this year's application that will help fund the installation of a Pedestrian Hybrid Beacon (PHB) on Harroun Road at the Sylvania River Trail crossing. A traffic study completed in October 2020 determined that a PHB was warranted and would greatly improve bicycle and pedestrian safety. The estimated cost of the PHB project is \$155,266.

A financial summary of this year's application for both projects would be as follows:

ODOT HSIP (60.1%)	\$1,677,766
City of Sylvania (15.9%)	\$442,229
OPWC Grant Application (24.0%)	<u>\$669,000</u>
<b>Total Combined Project Cost</b>	<b>\$2,788,995</b>

We would recommend proceeding ahead and pursuing OPWC grant funds in the amount of \$669,000.

Sincerely,

Kevin G. Aller, P.E.  
Director of Public Service



**CURRENT PROJECT ESTIMATE**  
**FOR**  
**LUC-CR-4-9.77 (PID 109598)**  
**&**  
**HARROUN ROAD PEDESTRIAN HYBRID SIGNAL**  
**(CITY OF SYLVANIA, ODOT, OPWC)**

Design & Engineering	\$287,873	ODOT, City
Advertising & Bidding	\$1,000	City
Right of Way	\$582,125	ODOT, City, OPWC
Construction & Contingency	\$1,714,672	ODOT, City, OPWC
Construction Inspection/Testing	\$203,325	City, OPWC
<b>TOTAL PROJECT COST</b>	<b>\$2,788,995</b>	

**ODOT HIGHWAY SAFETY IMPROVEMENT  
PROGRAM (HSIP)**  
(60.1%)

Design & Engineering	\$282,781
Advertising & Bidding	\$0
Right of Way	\$167,500
Construction & Contingency	\$1,227,485
Construction Inspection/Testing	<u>\$0</u>
<b>TOTAL</b>	<b>\$1,677,766</b>

**CITY OF SYLVANIA**  
(15.9%)

Design & Engineering	\$5,092
Advertising & Bidding	\$1,000
Right of Way	\$144,625
Construction & Contingency	\$217,187
Construction Inspection/Testing	<u>\$74,325</u>
<b>TOTAL</b>	<b>\$442,229</b>

**OHIO PUBLIC WORKS COMMISSION**  
(24.0%)

Design & Engineering	\$0
Advertising & Bidding	\$0
Right of Way	\$270,000
Construction & Contingency	\$270,000
Construction Inspection/Testing	<u>\$129,000</u>
<b>TOTAL</b>	<b>\$669,000</b>

RESOLUTION NO. 22 -2020

**A RESOLUTION AUTHORIZING THE MAYOR AND DIRECTOR OF FINANCE TO FILE AN OHIO PUBLIC WORKS COMMISSION GRANT APPLICATION FOR THE MONROE STREET AND HARROUN ROAD INTERSECTION IMPROVEMENT PROJECT; AND DECLARING AN EMERGENCY.**

WHEREAS, the Director of Public Service, by report dated November 16, 2020, has requested permission to apply for Ohio Public Works Commission ("OPWC") grant funding for the Monroe Street and Harroun Road Improvement Project; and,

WHEREAS, the Monroe Street and Harroun Road Improvement Project will widen westbound Monroe Street within the project limits, provide additional turning lane capacities to Harroun Road, improve intersection geometry deficiencies and fully upgrade both traffic signals; and,

WHEREAS, the City previously applied for and received grant funding of \$1,677,766 towards the total project cost of \$2,633,729; and,

WHEREAS, in anticipation of construction scheduled for 2022, a traffic study was recently completed and found that a Pedestrian Hybrid Beacon was warranted on Harroun Road at the Sylvania River Trail crossing; and,

WHEREAS, the estimated cost of the Pedestrian Hybrid Beacon is \$155,266 and the Director of Public Service, by report dated November 16, 2020, has indicated that the estimated cost of this project, with the Pedestrian Hybrid Beacon, is \$2,788,995, with the City of Sylvania contributing \$442,229 (15.9%); ODOT Highway Safety Improvement Grant Funding in the amount of \$1,677,766 (60.1%) with the remaining funded by the grant in the amount of \$669,000 (24.0%) and has recommended the City proceed with the grant application.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Sylvania, Lucas County, Ohio, \_\_\_\_\_ members elected thereto concurring:

SECTION 1. That the Mayor and Director of Finance of the City of Sylvania are hereby authorized to file an application for OPWC grant funding for the Monroe Street and Harroun Road Intersection Improvement and Harroun Road Pedestrian Hybrid Beacon Project.

SECTION 2. That the Mayor and Director of Finance are authorized to enter into any agreements as may be necessary and appropriate for obtaining this financial assistance.

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

SECTION 4. That the Clerk of Council is hereby directed to post a copy of this Resolution in the office of the Clerk of Council in the Municipal Building pursuant to ARTICLE III, Section 12 of the Charter of this City.

SECTION 5. That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, property and welfare and for the further reason that the City should file its application for the grant immediately and therefore this Resolution should be made effective immediately. Provided this Resolution receives the affirmative vote of five (5) or more members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force thirty (30) days after it is approved by the Mayor or as otherwise provided by the Charter.

Vote dispensing with the second and third readings:                      Yeas\_\_\_\_ Nays \_\_\_\_

Passed, \_\_\_\_\_, 2020, as an emergency measure.

\_\_\_\_\_  
President of Council

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Director of Law

APPROVED:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

10a

**ORDINANCE NO. 101 -2020**

**AUTHORIZING THE MAYOR AND DIRECTOR OF FINANCE OF THE CITY OF SYLVANIA, OHIO, TO ENTER INTO A GROUND LEASE WITH THE SYLVANIA AREA JOINT RECREATION DISTRICT FOR ADDITIONAL PROPERTY AND PARKING FOR CENTENNIAL TERRACE; AND DECLARING AN EMERGENCY.**

WHEREAS, since acquiring Centennial Terrace on May 4, 2007, the Sylvania Area Joint Recreation District ("SAJRD") has made several improvements to the facility, including enlarging and reconfiguring the stage, new flooring, and constructing a new storage on office building located on the east side of the property; and,

WHEREAS, Ordinance No. 56-2009, passed by Sylvania City Council on June 15, 2009, authorized the Mayor and Director of Finance to enter into a Real Property Lease Agreement with the Sylvania Area Joint Recreation District for additional parking for Centennial Terrace for a period of ten years, expiring on June 1, 2019; and,

WHEREAS, Ordinance No. 98-2019, passed by Sylvania City Council on December 2, 2019, authorized the Mayor and Director of Finance to enter into a Purchase Agreement with Rebecca S. Brown, Russell D. Brown and Cynthia L. Alt for the property located at 8515 Sylvania-Metamora Rd., Sylvania, Ohio for the amount of \$225,000; and,

WHEREAS, one of the contingencies of the Purchase Agreement required the City to secure the commitment of SAJRD to contribute to the purchase of the property in order to provide for the long-term planning of both the City and SAJRD; and,

WHEREAS, representatives of the City and SAJRD have met to discuss the ongoing parking and recreation needs and have proposed to enter into a Ground Lease as set forth in "Exhibit A" attached hereto for the adjacent City-owned property consisting of 7.7 acres to provide additional parking and as further described on "Exhibit A" to said Lease Agreement; and,

WHEREAS, the Ground Lease is for a term of thirty (30) years and provides for Base Rent of Two Hundred Twenty-Five Thousand Dollars (\$225,00.00), payable in equal annual installments of Seven Thousand Five Hundred Dollars (\$7,500.00) per year, however, the Lease may be terminated early if SAJRD is successful in passing an additional levy to provide funds to pay the total Base Rent in a lump sum; and,

WHEREAS, upon payment of all payments due under the Ground Lease, the City will transfer ownership of the property to SAJRD; and,

WHEREAS, SAJRD has approved and authorized this Ground Lease by Resolution No. 4-2020, passed November 9, 2020.

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Sylvania, Lucas County, Ohio, \_\_\_\_\_ members elected thereto concurring:

SECTION 1. That the Mayor and Director of Finance be, and they hereby are, authorized to enter into, on behalf of this City, a Ground Lease in the form and substance of said "Exhibit A" with the Sylvania Area Joint Recreation District.

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

SECTION 3. That the Clerk of Council is hereby directed to post a copy of this Ordinance in the Office of the Clerk of Council in the Municipal Building pursuant to ARTICLE III, Section 12, of the Charter of this City.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, property and welfare and for the further reason that the Ground Lease should be entered into at the earliest possible time. Provided this Ordinance receives the affirmative vote of five (5) or more members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force thirty (30) days after it is approved by the Mayor or as otherwise provided by the Charter.

Vote dispensing with the second and third readings: Yeas \_\_\_\_\_ Nays \_\_\_\_\_

Passed, \_\_\_\_\_, 2020 as an emergency measure.

\_\_\_\_\_  
President of Council

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Director of Law

APPROVED:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

## **GROUND LEASE**

**THIS GROUND LEASE** (this "Ground Lease") is effective as of the 1st day of July, 2020, between City of Sylvania, an Ohio municipality (herein referred to as "Lessor"), with an address of 6730 Monroe Street, Sylvania, Ohio, and Sylvania Area Joint Recreation District (herein referred to as "Lessee"), with an address of 7060 Sylvania Avenue, Sylvania, OH 43560.

### **RECITALS:**

A. Lessor is the fee owner of the Property (herein referred to as the "Property" or the "Leased Property") located in Lucas County, Ohio, more fully described on Exhibit A attached hereto and made a part hereof, consisting of approximately 7.7 acres, and

B. Lessee desires to lease and ultimately to own the Leased Property.

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

### **Section 1. Description of Real Property; Term; and Ownership.**

1.01 **Lease.** Lessor does hereby lease to Lessee and Lessee does hereby lease from Lessor the Leased Property.

1.02 **Term.** The term of this Ground Lease shall commence on the date first set forth above (the "Commencement Date") and shall continue for a period of thirty (30) years (the "Term"), unless this Ground Lease is terminated earlier for any reason set forth in other provisions of this Ground Lease.

1.03 **Early Termination of Lease.** Lessor and Lessee agree that in the event that Lessee is able to pass an additional levy providing funds available to pay all of the then remaining Base Rent payments due under this Lease, Lessee shall pay such payments of Base Rent in a lump sum, the Lease shall be terminated and the provisions of Section 1.04 shall become effective.

1.04 **Transfer of Ownership of Leased Property.** Upon the payment of all payments due under this Ground Lease, Lessor shall deed the Leased Property to Lessee without further consideration. Closing costs shall be divided between the parties by local custom. Lessor shall furnish a commitment for title insurance, to be followed by title policy, showing the Leased Property to be free and clear of liens and encumbrances caused or created by Lessor in the total amount of the Base Rent paid over the Term.

1.05 **Annexation.** Lessee agrees that it will support the annexation of the Leased Property with the City of Sylvania and cooperate with the Lessor in connection with its efforts to do so.

**Section 2. Rent.**

2.01 **Base Rent.** During the Term, Lessee agrees to pay Lessor, without notice or demand, annual rent for the Leased Property in the amount of Two Hundred Twenty-five Thousand Dollars (\$225,000.00) (the "Base Rent"), payable in annual installments of Seven Thousand Five Hundred Dollars (\$7,500.00) on the first day of July each year (the "Rent Due Date") beginning in 2021. Payments of Base Rent shall be made by Lessee to Lessor by a single check or draft payable to the order of Lessor and delivered to Lessor. It is intended by Lessor and Lessee that payment of the Base Rent be absolutely net to Lessor and that all costs and expenses and obligations of every kind and nature whatsoever relating to the Leased Property and the Lessee Improvements (collectively hereinafter from time to time, the "Leased Property").

(a) **Liability Insurance.** Lessee, at Lessee's sole cost and expense, agrees it shall at all times during the Term carry and maintain in full force and effect, for the mutual benefit of Lessee and Lessor, comprehensive, broad-form, commercial general liability insurance against claims and liability for personal injury, death or property damage, occurring in, on or about the Leased Property, with the following minimum limits: One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage per occurrence.

(b) **Casualty Insurance.** Lessee, at its sole cost and expense, shall, during the Term of this Ground Lease, keep any improvements on the Leased Property ("Lessee Improvements"), if any, insured against loss or damage by fire and all risks comprehended by standard extended coverage endorsements in amounts no less than one hundred percent (100%) of replacement cost of the Lessee Improvements. Lessee shall be solely responsible for adjustment of any casualty insurance claim. Loss proceeds shall be paid to Lessee and applied in accordance with this Ground Lease. Loss proceeds shall under no circumstances be paid to Lessor unless (1) some other express provision of this Ground Lease requires Lessee to pay or assign such proceeds to Lessor, or (2) Lessee validly elects to terminate this Ground Lease.

(c) **Workers' Compensation Insurance.** If applicable, Lessee shall maintain workers' compensation insurance in the minimum amounts as required by Ohio law, as amended.

(d) **Insurance Policies.** All insurance provided for in this Ground Lease shall be obtained from a responsible insurance company or companies reasonably satisfactory to Lessor and authorized to do business in the State of Ohio. Lessor shall be named as an additional insured in such insurance policies as Lessor's interest appears. Originals of the policies of such insurance or certificates thereof shall be delivered to Lessor promptly upon the commencement of the Term and originals or renewals thereof or certificates thereof shall be delivered to Lessor not less than thirty (30) days prior to the expiration dates of the respective policies.



(e) **Taxes and Assessments.** Lessee shall pay before delinquent all charges for real estate taxes and assessments, if any, which may accrue and become a lien with respect to the Leased Property (the "Taxes").

### **Section 3. Use and Care of Leased Property.**

3.01 **Use in Compliance with Law.** Lessee may use the Leased Property for a parking lot, for recreational activities and uses reasonably related thereto, and for any other use without Lessor's consent, so long as such other use is in compliance with applicable laws, ordinances, orders, rules, regulations and requirements of all public authorities. Lessee further covenants and agrees that Lessee will not use, or permit any person to use, the Leased Property for any purpose which directly or indirectly is forbidden by public law, ordinance or governmental or municipal regulation or order, or which may be dangerous to life, limb, or property. Lessee covenants that Lessee shall procure and maintain all necessary permits and licenses required in connection with the operation by Lessee of its business on the Leased Property and promptly pay when due all proper fees and charges for all such licenses and permits. Lessee shall cause the Leased Property to be maintained in first class condition and in conformity with the laws, ordinances, orders, rules, regulations and requirements of all public authorities, and Lessee shall, at Lessee's sole cost and expense, make all construction, additions, improvements, alterations and repairs to the Leased Property and the appurtenances and equipment thereof required by any lawful authority.

3.02 **Hazardous Material.** Lessee shall not cause or permit any hazardous or toxic material or substance (as defined by existing or future federal, state or local law or regulation) to be stored, released or used in or about the Leased Property in violation of applicable law. Lessee shall handle, store and dispose of all waste in compliance with all laws, rules and regulations. Lessee shall defend, indemnify and hold Lessor harmless from any and all claims, judgments, administrative orders, penalties, fines, costs, damages, liabilities or losses which arise or occur during or after this Ground Lease as a result of Lessee's breach of this Section 3.02, including, without limitation, all liability arising under CERCLA, or any amendment thereto. Lessee's obligation hereunder includes, without limitation, all attorneys' fees, costs incurred in connection with any investigation of site conditions, or any clean-up required by federal, state or local governmental authorities having jurisdiction of the same. This obligation and indemnification shall survive the expiration of termination of this Ground Lease.

### **Section 4. Liens.**

4.01 **Mechanics' Liens.** Lessee shall not permit any mechanics', laborers', materialmens' or other liens to stand against the Leased Property for any labor or material furnished or claimed to have been furnished in connection with work of any character performed or claimed to have been performed on, or pertaining to, the Leased Property, whether such work was performed or materials furnished prior or subsequent to the date of this Ground Lease. If any such mechanics' lien is filed or imposed against the Leased Property, Lessee shall cause such lien to be discharged of record within fifteen (15) days after notice of its filing by payment, bond or court order.

4.02 **Discharge by Lessor.** In case Lessee shall fail to so discharge any lien or claimed lien, then Lessor may, at Lessor's option, remove or discharge such lien or claim for lien. Any amounts advanced by Lessor for such purpose, including any and all attorneys' fees incurred by Lessor, shall be additional rent immediately due and payable from Lessee to Lessor on demand.

4.03 **No Mechanics' Liens.** Lessor shall not be liable for any labor, services or materials furnished to Lessee in connection with any work performed on the Leased Property, and no mechanics' lien for any such labor, services or material shall be effective against Lessor or the Leased Property.

## **Section 5. Liability of Lessor; Condemnation.**

5.01 **Liability of Lessor.** Lessor shall not be liable for damage done to the Leased Property, any improvements installed by Lessee or any personal property of Lessee located thereon, nor for any damage arising from acts or negligence of Lessee or of any owners or occupants of adjoining or contiguous property, nor for any damage caused by trespassers, vandals, thieves, loiterers, or any other unauthorized personnel.

### **5.02 Condemnation.**

(a) **Definitions.** A "Condemnation" means: (a) any temporary or permanent taking of all or part of (or of the right to use or occupy) the Lessee Improvements and/or the Leased Property by condemnation, exercise of any right of eminent domain, or any similar proceeding; and/or (b) any action by any governmental agency not resulting in an actual transfer of an interest in (or of the right to use or occupy) the Lessee Improvements and/or the Leased Property but creating a right to compensation for the Lessee Improvements and/or the Leased Property, such as a change in the grade of any street upon which the Lessee Improvements and/or the Leased Property abut. A "Condemnation Award" means the entire amount of any award paid or payable to Lessor and/or Lessee after the date hereof on account of any Condemnation, as compensation for any Condemnation, including: (1) any interest payable on account of such award; (2) any award made on account of any improvements that are the subject of a Condemnation, whether or not the value of such improvements is the subject of a separate award or otherwise separately determined by the applicable governmental agency; (3) the full amount paid or payable by the condemning authority on account of the estate that is the subject of the Condemnation, as determined pursuant to the Condemnation; and (4) any other sums payable on account of such Condemnation, including on account of any prepayment premium payable under any mortgage. An "Insubstantial Condemnation" means any Condemnation other than (1) a Substantial Condemnation and (2) a Temporary Condemnation. A "Substantial Condemnation" means a Condemnation of the entire Leased Property and/or Lessee Improvements or any Condemnation that, in Lessee's judgment renders uneconomic the portion of the Leased Property and/or Lessee's improvements remaining after such Condemnation. Tenant may waive in writing its right to treat as a Substantial Condemnation any Condemnation that would otherwise qualify as such. A "Temporary Condemnation" means a Condemnation of the temporary right to use or occupy all or part of the Leased Property and/or the Lessee Improvements.

(b) **Substantial Condemnation.** If a Substantial Condemnation occurs after the Date hereof, then this Ground Lease shall terminate as of the effective date of the transfer of title pursuant to such Substantial Condemnation. Rent shall be apportioned as of the date of termination. Any Condemnation Award shall be allocated (subject to the rights of Leasehold Mortgagee(s)) as follows and in the following order of priority (without duplication) until exhausted: (i) to any Leasehold Mortgagee, to the extent of the principal balance (and accrued interest) secured by, and all other sums payable pursuant to or secured by, its Leasehold Mortgage; (ii) to reimburse Lessee for Lessee's actual costs and expenses, incurred as a result of the Substantial Condemnation and determination and collection of the Condemnation Award; (iii) to Lessee, after taking the payment made pursuant to (i) into consideration, until it has received the fair market value of the leasehold estate as of the date of transfer of title pursuant to the Condemnation; (iv) to Lessor until it has received such portion of the Condemnation Award as shall equal the fair market value of the fee estate subject to this Ground Lease as of the date of transfer of title pursuant to the Condemnation; and (v) the remainder to Lessee.

(c) **Insubstantial Condemnation.** If an Insubstantial Condemnation occurs after the date hereof, any such Condemnation Award shall be paid directly to Lessee.

(d) **Temporary Condemnation.** If a Temporary Condemnation occurs after the date hereof and relates to a period longer than 90 days, then Lessee may, with Leasehold Mortgagee's consent, terminate this Ground Lease effective as of the date of the Temporary Condemnation. In that event only, the Condemnation Award from such Temporary Condemnation shall belong to Lessor. If the Temporary Condemnation relates to a period of 90 days or less, or if Lessee does not elect to terminate this Ground Lease on account of the Temporary Condemnation, then the Condemnation Award arising from such Temporary Condemnation (to the extent attributable to periods within the Term) shall be to Lessee and this Ground Lease shall not be affected in any way.

(e) **Settlement or Compromise.** Lessor shall not settle or compromise any Condemnation Award without obtaining consent by Lessee. Lessee shall be entitled to control such proceedings (to the exclusion of Lessor, if so elected by Lessee) and claim such share of the Condemnation Award as Lessee is entitled to receive under this Ground Lease. Lessor shall have no right to participate in any proceedings regarding a Temporary Condemnation unless either (x) Lessee elects to terminate this Ground Lease on account of the Temporary Condemnation, or (y) Lessee is not legally permitted to participate in such proceedings. In the latter case, Lessor shall participate in such proceedings in accordance with Lessee's instructions, all at Lessee's reasonable expense and using counsel selected, instructed, and paid by Lessee.

(f) **Prompt Notice.** If either party becomes aware of any casualty or threatened, contemplated, or actual Condemnation, then such party shall promptly give notice of such casualty or Condemnation to the other party.

## **Section 6. Indemnity.**

6.01 **Indemnification of Lessor.** Unless arising from its gross negligent acts or intentional misconduct, Lessor shall not be liable for any loss, damage or injury of any kind or character to any person or property arising from any rise of the Leased Property or any Lessee

Improvements or caused by any defect in the Leased Property or caused by or arising from any act or omission of Lessee or any of its agents, employees, licensees or invitees or by or from any accident, fire or other casualty on the Leased Property or occasioned by the failure of Lessee to maintain the Lessee Improvements in safe condition. Lessee waives all claims and demands on its behalf against Lessor for any such loss, damage or injury. Lessee agrees to defend, indemnify and hold Lessor, its respective officers, employees, agents, successors and assigns, harmless from any and all claims, costs, losses, expenses, liens, causes of action, damages or liability, including attorneys' fees, whatsoever arising out of or in connection with this Ground Lease, the use and occupancy of the Leased Property and the Lessee Improvements, whether resulting in injury or death to persons or damage to property. This indemnification shall not apply to any gross negligent acts or intentional misconduct of the Lessor.

6.02 **Tender of Defense.** In case any action or proceeding shall be commenced against Lessor growing out of any matter covered by the indemnities set forth in this Ground Lease, Lessor may give written notice of the same to Lessee, and thereafter Lessee shall assume and defend Lessor.

## **Section 7. Default.**

7.01 **Events of Default.** An event of default under this Ground Lease shall be deemed to occur upon the happening of any one of the following events (an "Event of Default") whether voluntarily or involuntarily and, without limitation, whether brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any governmental body:

(a) if Lessee shall default in the payment of additional rent or any other sums required to be paid by Lessee pursuant to the provisions of this Ground Lease following thirty (30) days prior written notice; or

(b) if Lessee shall default in the performance of any other duty of Lessee pursuant to this Ground Lease (other than the payment of rent or any other sums required hereunder to be paid by Lessee) and such default shall continue in whole or, in part for a period of sixty (60) days following written notice given after such default by Lessor to Lessee and specifying such default (provided if such default cannot reasonably be corrected within said sixty (60) day period, Lessee shall be given additional time to cure such default provided Lessee is acting diligently to cure); or

(c) if Lessee shall make a general assignment for the benefit of its creditors, seek any reorganization, liquidation, or composition of its debt, shall abandon or vacate the Leased Property or any part thereof, shall admit that Lessee cannot pay Lessee's debts as they become due, or shall file a petition seeking relief under any bankruptcy, insolvency or reorganization law; or

(d) if proceedings in bankruptcy be instituted against Lessee, or a receiver is appointed for all or substantially all of Lessee's business or assets, or a trustee is appointed for Lessee after a petition for Lessee's reorganization under the Federal Bankruptcy Act of 1985 or any future law having the same general purpose, is filed, and if such bankruptcy, receivership or

trusteeship is not dismissed within sixty (60) days following written notice, by Lessor to Lessee, specifying such default.

7.02 **Remedies.** If an Event of Default shall occur Lessor shall have any one or more of the following remedies at Lessor's election:

(a) without barring later election of any other remedy, Lessor, without taking possession of the Leased Property, may require strict performance of all of the covenants and obligations hereof as the same shall accrue and shall have the right to specific performance of all of the Lessee's obligations hereunder;

(b) without barring later election of any other remedy, Lessor shall have the right without any further demand or notice to re-enter and repossess the Leased Property and to remove all persons and property from the Leased Property or Lessee Improvements, using all necessary force to do so; such property may be removed and stored in a public warehouse or elsewhere at the cost of, at the risk of and for the account of Lessee. Should Lessor elect to re-enter as herein provided, or should Lessor take possession pursuant to legal proceedings or otherwise pursuant to any notice provided by law, Lessor may at its election.

(i) declare this Ground Lease terminated, in which event, in addition to any other remedy Lessor may have, Lessor may recover from Lessee all damages Lessor may incur by reason of such breach, including the cost of recovering the Leased Property located thereon; or

(ii) from time to time without terminating this Ground Lease, take reasonable efforts to relet the Leased Property, the Lessee Improvements, or any part thereof, for such term or terms (which may be for a term extending the term of this Ground Lease) and at such rental or rentals and upon such other terms and conditions as Lessor may deem advisable.

(c) No such re-entry or taking possession of the Leased Property by Lessor shall be construed as an election on its part to terminate this Ground Lease, unless a written notice of such election be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Lessor may at any time thereafter elect to terminate this Ground Lease for such previous breach, in which event Lessor may recover from Lessee in the manner provided above in subparagraph (i) of Section 7.02(b).

(d) In the event of the termination of this Ground Lease, as aforesaid, Lessee covenants and agrees to defend, indemnify and save harmless Lessor from any costs or liabilities to third parties arising from such termination and re-entry.

(e) Lessee agrees to pay all expenses incurred by Lessor for attorneys' fees, brokerage commissions and all other costs of enforcing the Lease, relating the Leased Property and Lessee Improvements and restoring and maintaining the Leased Property and Lessee Improvements.

(f) All right, title and interest in and to the Lessee Improvements shall vest in, and transfer to, Lessor immediately and automatically upon the termination of this Ground Lease, without any further action required by Lessee or Lessor.

7.03 **Remedies Cumulative.** No remedy herein or otherwise conferred upon or reserved to Lessor shall be considered exclusive of any other remedy, but the same shall be cumulative and shall in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Ground Lease to Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient. No delay or omission of Lessor to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein.

7.04 **Waiver.** No waiver of any breach of any of the covenants of this Ground Lease shall be construed, taken or held to be a waiver of any other breach or waiver, acquiescence in or consent to any further or succeeding breach of the same covenant.

#### **Section 8. Possession; Surrender.**

8.01 **Taking of Possession.** Taking of possession of the Leased Property by Lessee shall be conclusive evidence as against Lessee that the Leased Property was in satisfactory condition when Lessee took possession. No representation respecting the condition of the Leased Property has been made by Lessor to Lessee unless contained herein; and no promise of Lessor to prepare, alter or improve the Leased Property for Lessee's use and occupancy shall be binding upon Lessor unless contained herein.

8.02 **Surrender of Possession.** At the expiration, or earlier termination in any manner of the Term of this Ground Lease, Lessee shall quit and surrender the Leased Property and Lessee Improvements, together with all additions, installations, improvements and alterations which may have been installed by Lessee, broom clean and in good order, condition and repair; and all right, title and interest and Lessee in and to the Lessee Improvements shall vest in, and transfer to, Lessor immediately and automatically without any further action by Lessee or Lessor. Lessee shall have the right to remove from the Lessee Improvements, all movable trade fixtures, furniture, equipment and other personal property on or before the expiration or termination date, provided Lessee promptly repairs any resulting damage to the Lessee Improvements or the Leased Property. Any such personal property remaining on the Leased Property or Lessee Improvements after such date shall be deemed abandoned by Lessee and retained by Lessor or disposed of at Lessee's cost.

#### **Section 9. Assignment or Subletting.**

Lessee shall not assign, convey, transfer, mortgage, pledge, or otherwise encumber this Ground Lease or sublet or permit to be used or occupied by anyone other than Lessee, all or any part of the Leased Property, without the advance written consent of Lessor, which shall not be unreasonably withheld. Such assignment shall include, but is not limited to, a merger, consolidation, reorganization of Lessee, the sale of all or substantially all of Lessee's assets, dissolution or other transfer of a controlling interest in Lessee.

**Section 10. Estoppel Certificates.**

Lessee and Lessor agree at any time and from time to time, upon not less than ten (10) business days prior written request from the other party, to execute, acknowledge and deliver to the requesting party, a statement in writing certifying that this Ground Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that there are no uncured defaults hereunder, if such statement of fact shall be true or, if there be uncured defaults, stating the same, the dates to which the Base Rent and other charges have been paid in advance and such other items related to the terms and conditions of this Ground Lease as the requesting party may reasonably request. It is intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser of the fee simple title to the Leased Property or any mortgagee of Lessor or Lessee under any mortgage or the beneficiary of any deed of trust upon the fee or leasehold interest of the Leased Property or any assignee of either party's interest.

**Section 11. Waiver of Claims and Waiver of Subrogation.**

Lessor and Lessee hereby waive all claims, causes of action and rights of recovery against the other party, and their respective officers, employees, agents, contractors, successors and assigns for any loss or damage occurring to the Leased Property, fixtures, trade fixtures, merchandise and personal property of every kind located in and about the Leased Property and any business interruption loss or rent loss resulting from all perils covered by insurance regardless of cause or origin, including the negligence of either party, their respective officers, employees, agents, contractors, guests, invitees, customers, heirs, administrators, successors and assigns. Each of the parties agrees to obtain from their respective insurance carriers endorsements to such policies of insurance waiving the right of subrogation of the insurance carrier relating to any property damage coverage. However, any such policy or policies will not be invalidated in whole or in part by reason of this subrogation.

**Section 12. Miscellaneous.**

12.01 **Notice and Demands.** All notices to or demands upon Lessor or Lessee, desired or required to be given under any of the provisions hereof shall be in writing. Unless otherwise specifically herein provided, any notices or demands from Lessor to Lessee shall be deemed to have been duly and sufficiently given if a copy thereof has been filed by United States registered or certified mail in an envelope properly stamped and addressed to Lessee at the address set forth above, or to such other person or place as Lessee may from time to time designate in writing. Any notices or demands from the Lessee to the Lessor shall be deemed to have been duly and sufficiently given if filed by United States registered or certified mail in an envelope properly stamped and addressed to the Lessor, at the address set forth above, or to such other place as Lessor may from time to time designate in writing.

12.02 **Successors in Interest.** Subject to the other provisions hereof all of the covenants, agreements, conditions and undertakings in this Ground Lease shall extend and inure to the benefit of and be binding upon the successors and permitted assigns of the respective parties hereto, the same as if they were in every case specifically named, and shall be construed as covenants running with the Leased Property. Wherever in this Ground Lease reference is

made to either of the parties, it shall be held to include and apply to, wherever applicable, the successors and permitted assigns of such party. Nothing herein contained shall be construed to grant or confer upon any person or persons, firm, corporation or governmental authority, other than the parties hereto, their successors and permitted assigns, any right, claim or privilege by virtue of any covenant, agreement, condition or undertaking, in this Ground Lease.

12.03 **Inspection of Property.** Lessee agrees to permit Lessor and the authorized representatives of Lessor to enter the Leased Property at all times during reasonable business hours for the purpose of inspecting the Leased Property.

12.04 **No Recording.** This Ground Lease shall not be recorded, but either party may record a memorandum of lease stating the names and addresses of the parties, duration of the term and renewals and referencing the rights set forth in Sections 1.02, 1.03 and 1.04 above. The party requesting such memorandum of lease shall prepare and pay for all costs associated therewith.

12.05 **Captions.** The captions for this Ground Lease are for convenience only and are not to be construed as part of this Ground Lease and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

12.06 **Saving Clause.** If any term or provision of this Ground Lease or any application thereof shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Ground Lease shall not be affected thereby, but each term and provision of this Ground Lease shall be valid and be enforced to the fullest extent permitted by law.

12.07 **Choice of Law.** This Ground Lease shall be construed and enforced in accordance with the laws of the State of Ohio.

12.08 **Time.** Time is of the essence with respect to all of the terms and conditions of this Ground Lease.

12.09 **Quiet Enjoyment.** Lessee, on paying the rents and observing and keeping the covenants, agreements, conditions and obligations of this Ground Lease on Lessee's part to be observed and kept, shall lawfully, peaceably and quietly hold, occupy and enjoy the Leased Property during the Term of this Ground Lease and any without hindrance by Lessor. Lessor shall not be liable for any breach of this covenant that may occur after Lessor shall have ceased to be the owner of the Leased Property. Each succeeding owner of the Leased Property shall be deemed to have assumed and agreed to carry out for the period of its ownership all covenants and obligations of Lessor under this Ground Lease.

12.10 **Force Majeure.** In the event any party shall be delayed, hindered, or prevented from performing any act required by this Ground Lease by reason of strikes, lock-outs, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, war, or any reason of a similar nature, not the fault of the delayed party, then the performance of such act shall be excused and extended for a period equal to the period of such delay. However, Lessee shall not be excused in any event from the payment of Base Rent or additional rent or other sums of money due under the terms of this Ground Lease.



12.11 **Merger Clause.** This Ground Lease contains the entire agreement between the parties and there are no agreements, representations, or warranties, oral or written, which are not set forth herein. This Ground Lease may not be amended or revised, except by a writing signed by the parties.

*[signature page follows.]*

The parties executed this Ground Lease on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**LESSOR:**

**LESSEE:**

CITY OF SYLVANIA  
An Ohio municipality

SYLVANIA AREA JOINT  
RECREATION DISTRICT

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF LUCAS            )

The foregoing instrument was acknowledged before my this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_ the \_\_\_\_\_ of The City of Sylvania, an Ohio municipality.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_)  
  ) ss:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before my this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, as \_\_\_\_\_ of Sylvania Area Joint Recreation District, an \_\_\_\_\_ on behalf of said company.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

11

**ORDINANCE NO. 102 -2020**

**AUTHORIZING THE DONATION OF 25 SAFARILAND HOLSTERS TO THE AVON LAKE POLICE DEPARTMENT; 10 SAFARILAND HOLSTERS TO THE WALBRIDGE POLICE DEPARTMENT; 10 SAFARILAND HOLSTERS TO THE WOODVILLE POLICE DEPARTMENT AND 10 SAFARILAND HOLSTERS TO THE CRESTON POLICE DEPARTMENT; DETERMINING SAID PROPERTY TO BE OF NO FURTHER USE TO THE CITY OF SYLVANIA; AND DECLARING AN EMERGENCY.**

WHEREAS, the City of Sylvania previously purchased Safariland holsters for its Police Department; and,

WHEREAS, this equipment has been replaced by the City of Sylvania Police Department and, therefore, is of no further use to the City; and,

WHEREAS, the Chief of Police has recommended that 25 Safariland holsters be donated to the Avon Lake Police Department; 10 Safariland holsters be donated to the Walbridge Police Department; 10 Safariland holsters be donated to the Woodville Police Department and 10 Safariland holsters be donated to the Creston Police Department.

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Sylvania, Lucas County, Ohio, \_\_\_\_\_ members elected thereto concurring:

SECTION 1. That it is hereby determined that the City of Sylvania no longer needs the 55 Safariland holsters.

SECTION 2. That the Mayor and Director of Finance be, and they are hereby are, authorized to donate 25 Safariland holsters to the Avon Lake Police Department; 10 Safariland holsters to the Walbridge Police Department; 10 Safariland holsters to the Woodville Police Department and 10 Safariland holsters to the Creston Police Department as they are of no further use to the City.

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

SECTION 4. That the Clerk of Council is hereby directed to post a copy of this Ordinance in the Office of the Clerk of Council in the Municipal Building pursuant to ARTICLE III, Section 12, of the Charter of this City.

SECTION 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, property and welfare and for the further reason that the holsters described above are no longer needed by the City and should be donated to the other Police Departments at the earliest possible time. Provided this Ordinance receives the affirmative vote of five (5) or more members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force thirty (30) days after it is approved by the Mayor or as otherwise provided by the Charter.

Vote dispensing with the second and third readings:            Yeas \_\_\_\_\_ Nays \_\_\_\_\_

Passed, \_\_\_\_\_, 2020, as an emergency measure.

\_\_\_\_\_  
President of Council

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Director of Law

APPROVED:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

12

RESOLUTION NO. 23 - 2020

**A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SYLVANIA IN SUPPORT OF SENATE BILL 365 AND TO URGE  
GOVERNOR DeWINE AND THE OHIO STATE LEGISLATURE TO  
EXTEND THE DEADLINE FOR HOLDING PUBLIC MEETINGS  
ELECTRONICALLY; AND DECLARING AN EMERGENCY.**

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person; and,

WHEREAS, on January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and,

WHEREAS, on March 9, 2020, Governor DeWine declared a State of Emergency in the State of Ohio by Executive Order 2020-01D; and,

WHEREAS, on April 6, 2020, Mayor Stough declared a State of Emergency in the City of Sylvania; and,

WHEREAS, on March 27, 2020, the Ohio Legislature passed House Bill 197, which includes a provision to allow state boards and commissions, local and county governments, and higher education boards to operate meetings electronically during the declared emergency, but not beyond December 1, 2020; and,

WHEREAS, Ohio has experienced a significant spike of positive COVID-19 cases recently and the state of emergency has not been lifted; and,

WHEREAS, Senate Bill 365 proposes to extend the authorization for members of a public body to hold and attend meetings or hearings via electronic technology during the period of emergency declared by Governor DeWine is terminated.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Sylvania, Lucas County, Ohio, \_\_\_\_\_ members elected thereto concurring:

SECTION 1. That the Council of the City of Sylvania supports Senate Bill 365 and urges Governor DeWine and the Ohio Legislature to approve an extension of the operation of public meetings electronically until the public health emergency is terminated.

SECTION 2. That the Clerk of Council be, and she hereby is, directed to present a certified copy of this Resolution to Governor Mike DeWine and Senator Teresa Fedor, the sponsor of Senate Bill 365.

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

SECTION 4. That the Clerk of Council is hereby directed to post a copy of this Resolution in the Office of the Clerk of Council in the Municipal Building pursuant to ARTICLE III, Section 12, of the Charter of this City.

SECTION 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, property and welfare and for the further reason that, due to the spike in COVID-19 infections there is an immediate need to continue virtual meetings until the state of emergency declared by Governor DeWine is terminated. Provided this Ordinance receives the affirmative vote of five (5) or more members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force thirty (30) days after it is approved by the Mayor or as otherwise provided by this Charter.

Vote dispensing with the second and third readings:                      Yeas \_\_\_\_\_ Nays \_\_\_\_\_

Passed, \_\_\_\_\_, 2020, as an emergency measure.

ATTEST:

\_\_\_\_\_  
President of Council  
APPROVED AS TO FORM:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Director of Law

APPROVED:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date



DEPARTMENT OF PUBLIC SERVICE

KEVIN G. ALLER, PE DIRECTOR

November 12, 2020

To: Mayor and Members of City Council

Re: Council Referral – SUP-1-2020  
7600 W. Sylvania Ave.

Dear Mayor and Members of Council:

Following is an excerpt from the minutes of the regular meeting of the Municipal Planning Commission of November 10, 2020, Council Referral – Special Use Permit Amendment Application, SUP-1-2020, from David Sabo, 501 S. Dixie Highway, Lima, Ohio 45805 for a Special Use Permit to operate a shooting range at 7600 W. Sylvania Avenue, Sylvania, Ohio 43560:

..." Mr. Marciniak moved, Ms. Lindhuber seconded, to recommend to Council to approve the Special Use Permit as requested. Vote being: Marciniak, Lindhuber, Fischer, Stough and Lindsley (5) aye; (0) nay. Motion passed by a 5 to 0 vote."...

Sincerely,

Debra Webb, Secretary  
Municipal Planning Commission



# City of Sylvania

## Bank Reconciliation

October 2020

A

Ending balance for September 2020	31,483,546.20
Add: Monthly Receipts	<u>3,078,026.86</u>
Subtotal	\$ 34,561,573.06
Less: Monthly Disbursements	<u>2,621,652.33</u>
Ending balance for October 2020	\$ 31,939,920.73

Less:

CD Metamora Bank	\$ (2,144,420.23)
Star Ohio	(82,276.21)
Petty Cash (1)	(2,050.00)
Cemetery Savings	(1,062.86)
Toledo Community Fund	(31,803.18)
Key Bank Securities	(8,173.00)
5/3rd Securities	(8,084,123.49)
SJS Account	(5,813,609.42)
Morgan Stanley Investment	
UBS Financial	(7,320,750.97)
First Federal Bank (CD)	(2,065,555.94)
Key Bank (CD)	(1,031,625.00)
Sylvania Township Bonds	(230,000.00)
	\$ 5,124,470.43

(1)

Division of Public Service	\$ 150.00
Department of Finance	100.00
Division of Water	600.00
Division of Police	200.00
Municipal Court	700.00
Division of Taxation	150.00
Division of Forestry	150.00

Petty Cash Balance \$ 2,050.00

### BANK BALANCE

EOM 5/3rd Bank Balance	\$ 5,374,535.24
Deposit in Transit:	
Income Tax	7,418.30
General Deposit	26,424.31
Subtotal	\$ 5,408,377.85
Less: Outstanding Checks (2)	283,907.42
Adjusted Bank Balance	\$ 5,124,470.43
(2)	
September Outstanding Checks	\$ 589,961.93
Checks written this month	1,124,557.19
Voided Check #76433 dtd 8/12/20	(74.00)
Subtotal	\$ 1,714,445.12
Checks Cleared this month	(1,430,537.70)
October Outstanding Checks	\$ 283,907.42

Toby Schroyer  
Director of Finance, City of Sylvania

Board of Architectural Review

B

Minutes of the regular meeting of November 10, 2020. Mr. Lindsley called the meeting to order.

Members present: Mayor Craig Stough, Ken Marciniak, Carol Lindhuber, Kathleen Fischer, and Thomas Lindsley (5) present. Zoning Administrator, Timothy Burns present.

Ms. Fischer moved, Ms. Lindhuber to approve the Minutes of the October 14, 2020, meeting as submitted. Vote being: Stough, Lindhuber, Fischer, Marciniak and Lindsley (5) aye; (0) nay. Motion passed by a 5 to 0 vote.

Item 3 – Regulated Sign – app. no. 43-2020 requested by Brian Heil of Toledo Sign Co. for Rite Aid, 8310 Sylvania-Metamora Road, Sylvania, Ohio 43560. Application is for three replacement wall signs and one replacement monument sign.

Mr. Heil was present and explained that the replacement signs were being replaced due to Rite Aids rebranding and that all signs are being replaced “like for like”.

Signs are within the limits of the Sylvania Sign Code.

Ms. Lindhuber moved, Ms. Fischer seconded, to grant a Certificate of Appropriateness for the signs shown in the drawings submitted with the application. Vote being: Lindhuber, Marciniak, Fischer, Stough and Lindsley (5) aye; (0) nay. Motion passed by a 5 to 0 vote.

Mr. Marciniak moved, Ms. Lindhuber seconded to adjourn the meeting. All present voted aye. Meeting adjourned.

Submitted by,



Debra Webb, Secretary  
Municipal Planning Commission

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Sylvania Municipal Planning Commission

Minutes of the regular meeting of November 10, 2020. Mr. Lindsley called the meeting to order.

Members present: Mayor Craig Stough, Ken Marciniak, Carol Lindhuber, Kathleen Fischer, and Thomas Lindsley (5) present. Zoning Administrator, Timothy Burns present.

Ms. Lindhuber moved, Ms. Fischer seconded seconded to approve the Minutes of the October 14, 2020, meeting as submitted. Vote being: Stough, Lindhuber, Marciniak, Fischer and Lindsley (5) aye; (0) nay. Motion passed by a 5 to 0 vote.

Item 3 – Council Referral – for review and recommendation, Special Use Permit Application, SUP-1-2020, submitted by David Sabo, 501 S. Dixie Highway, Lima, Ohio 45805, for a Special Use Permit to operate a shooting range at 7600 W. Sylvania Avenue, Sylvania, Ohio 43560.

Mr. Sabo was present along with Mr. Jeff Swinford, both of Midwest Shooting Center.

Mr. Swinford gave a brief presentation that included background information on himself, Mr. Sabo and the Midwest Shooting Center.

Members asked many questions about the shooting facility such as the safety of the building structure, security, noise, volume of patrons expected each day and hiring practices of the employees.

Mr. Swinford and Mr. Sabo explained that the safety materials of the building include a fortified exterior that would include bollards around the perimeter, internal poured concrete walls with underlying reinforce steel, a compressed rubber membrane and many other items and added that there has never been a single projectile escape a facility; that they will have cameras both inside and outside the facility; that the materials provided for the fortification of the building will also serve and noise control, so much that no sound will be heard outside building or even inside the building outside of the shooting area; that they expect to receive between 200-250 patrons per day; and that extensive interviewing, background checks and drug screening will be required of all employees.

Further discussion of details about the business took place including shooting lane rentals, memberships, the various types of training that would be provided, gun sales and the requirements for those sales, potential use of the facilities for training by local law enforcement, hours of operation and also the revenue expectations.

Mr. Marciniak moved, Ms. Lindhuber seconded, to recommend to Council to approve the Special Use Permit as requested. Vote being: Marciniak, Lindhuber, Fischer, Stough and Lindsley (5) aye; (0) nay. Motion passed by a 5 to 0 vote.

Mr. Marciniak moved, Ms. Lindhuber seconded to adjourn the meeting. All present voted aye. Meeting adjourned.

Submitted by,



Debra Webb, Secretary  
Municipal Planning Commission