



# Public Works Commission

## Application for Financial Assistance

**IMPORTANT:** Please consult "Instructions for Financial Assistance for Capital Infrastructure Projects" for guidance in completion of this form.

**Applicant**

Applicant: Montgomery County Subdivision Code: 113-00113

District Number: 4 County: Montgomery Date: 08/19/2022

Contact: Joseph Dura Phone: 937-225-5507  
(The individual who will be available during business hours and who can best answer or coordinate the response to questions)

Email: duraj@mcoho.org FAX: \_\_\_\_\_

**Project**

Project Name: Mad River Road Resurfacing Zip Code: 45459

Subdivision Type	Project Type	Funding Request Summary	
	(Select single largest component by \$)	(Automatically populates from page 2)	
County _____	x 1. Road	Total Project Cost:	<u>874,500</u> .00
	2. Bridge/Culvert	1. Grant:	<u>50,000</u> .00
	3. Water Supply	2. Loan:	<u>150,000</u> .00
	4. Wastewater	3. Loan Assistance/ Credit Enhancement:	<u>0</u> .00
	5. Solid Waste		
	6. Stormwater	Funding Requested:	<u>200,000</u> .00

### District Recommendation (To be completed by the District Committee)

Funding Type Requested <small>(Select one)</small>	SCIP Loan - Rate: _____ % Term: _____ Yrs	Amount: _____ .00
<input type="checkbox"/> State Capital Improvement Program	RLP Loan - Rate: _____ % Term: _____ Yrs	Amount: _____ .00
<input type="checkbox"/> Local Transportation Improvement Program	Grant:	Amount: _____ .00
<input type="checkbox"/> Revolving Loan Program	LTIP:	Amount: _____ .00
<input type="checkbox"/> Small Government Program	Loan Assistance / Credit Enhancement:	Amount: _____ .00
District SG Priority: _____		

### For OPWC Use Only

STATUS _____	Grant Amount: _____ .00	Loan Type: <input type="checkbox"/> SCIP <input type="checkbox"/> RLP
Project Number: _____	Loan Amount: _____ .00	Date Construction End: _____
_____	Total Funding: _____ .00	Date Maturity: _____
Release Date: _____	Local Participation: _____ %	Rate: _____ %
OPWC Approval: _____	OPWC Participation: _____ %	Term: _____ Yrs



### 1.3 Availability of Local Funds

Attach a statement signed by the Chief Financial Officer listed in section 5.2 certifying all local resources required for the project will be available on or before the earliest date listed in the Project Schedule section. The OPWC Agreement will not be released until the local resources are certified. Failure to meet local share may result in termination of the project. Applicant needs to provide written confirmation for funds coming from other funding sources.

### 2.0 Repair / Replacement or New / Expansion

2.1 Total Portion of Project New / Expansion: \_\_\_\_\_<sup>0</sup>.00

### 3.0 Project Schedule

3.1 Engineering / Design / Right of Way	Begin Date: <u>08/05/2022</u>	End Date: <u>11/03/2023</u>
3.2 Bid Advertisement and Award	Begin Date: <u>01/05/2024</u>	End Date: <u>03/26/2024</u>
3.3 Construction	Begin Date: <u>05/06/2024</u>	End Date: <u>07/26/2024</u>

Construction cannot begin prior to release of executed Project Agreement and issuance of Notice to Proceed. Failure to meet project schedule may result in termination of agreement for approved projects. Modification of dates must be requested in writing by project official of record and approved by the Commission once the Project Agreement has been executed.

### 4.0 Project Information

If the project is multi-jurisdictional, information must be consolidated in this section.

#### 4.1 Useful Life / Cost Estimate / Age of Infrastructure

Project Useful Life: 15 Years      Age: 2005 (Year built or year of last major improvement)

*Attach Registered Professional Engineer's statement, with seal or stamp and signature confirming the project's useful life indicated above and detailed cost estimate.*

#### 4.2 User Information

Road or Bridge:      Current ADT 6624      Year 2021

Water / Wastewater: Based on monthly usage of 4,500 gallons per household; attach current ordinances.

Residential Water Rate      Current \$ 0      Number of households served: \_\_\_\_\_

Residential Wastewater Rate      Current \$ 0      Number of households served: \_\_\_\_\_

Stormwater:      Number of households served: \_\_\_\_\_

### 4.3 Project Description

A: SPECIFIC LOCATION (Supply a written location description that includes the project termini; a map does not replace this requirement.) 2000 character limit.

The project is located on Mad River Road in Miami and Washington Township, Montgomery County, Ohio. The project limits stretch from SR 725 to the Kettering Corp. limit, for a total length of approximately 3.64 miles.

**B: IDENTIFY THE PROBLEM (Describe the issue to be addressed) 2000 character limit.**

The existing section of Mad River Road to be addressed as part of this project requires a mill and fill to address the deteriorated state of the surface course. This deteriorated state creates a rough ride for motorists when traveling at the 35 mph posted speed limit.

**C: PROJECT SCOPE (Describe the work to be completed) 2000 character limit.**

**This project involves a 1 1/2" asphalt concrete milling and resurfacing of 3.64 miles of Mad River Road. Water valves, manhole lids, and monument boxes will be replaced and/or adjusted as needed. Existing raised pavement markers will be replaced. Finally, pavement markings and an asphalt rejuvenator will be applied.**

## 5.0 Project Officials

Changes in Project Officials must be submitted in writing from an officer of record.

### 5.1 Chief Executive Officer (Person authorized in legislation to sign project agreements)

Name: Michael B. Colbert  
Title: County Administrator  
Address: 451 West Third Street  
  
City: Dayton State: OH Zip: 45422  
Phone: 937-225-4582  
FAX:   
E-Mail: colbertm@mcoho.org

### 5.2 Chief Financial Officer (Can not also serve as CEO)

Name: Ronelle Kinney  
Title: Fiscal Officer  
Address: 451 West Third Street  
  
City: Dayton State: OH Zip: 45422  
Phone: 937-225-4904  
FAX:   
E-Mail: kinneyr@mcoho.org

### 5.3 Project Manager

Name: Joseph Dura  
Title: Roadway Engineer  
Address: 451 West Third Street  
  
City: Dayton State: OH Zip: 45422  
Phone: 937-225-5507  
FAX:   
E-Mail: duraj@mcoho.org

## 6.0 Attachments / Completeness review

Confirm in the boxes below that each item listed is attached (Check each box)

- x A certified copy of the legislation by the governing body of the applicant authorizing a designated official to sign and submit this application and execute contracts. This individual should sign under 7.0, Applicant Certification, below.
  
- x A certification signed by the applicant's chief financial officer stating the amount of all local share funds required for the project will be available on or before the dates listed in the Project Schedule section. If the application involves a request for loan (RLP or SCIP), a certification signed by the CFO which identifies a specific revenue source for repaying the loan also must be attached. Both certifications can be accomplished in the same letter.
  
- x A registered professional engineer's detailed cost estimate and useful life statement, as required in 164-1-13, 164-1-14, and 164-1-16 of the Ohio Administrative Code. Estimates shall contain an engineer's seal or stamp and signature.

A cooperative agreement (If the project involves more than one subdivision or district) which identifies the fiscal and administrative responsibilities of each participant.

Farmland Preservation Review - The Governor's Executive Order 98-IV, "Ohio Farmland Protection Policy" requires the Commission to establish guidelines on how it will take protection of productive agricultural and grazing land into account in its funding decision making process. Please include a Farm Land Preservation statement for projects that have an impact on farmland.

Capital Improvements Report. CIR Required by O.R.C. Chapter 164.06 on standard form.

- x Supporting Documentation: Materials such as additional project description, photographs, economic impact (temporary and/or full time jobs likely to be created as a result of the project), accident reports, impact on school zones, and other information to assist your district committee in ranking your project. Be sure to include supplements which may be required by your local District Public Works Integrating Committee.

## 7.0 Applicant Certification

The undersigned certifies: (1) he/she is legally authorized to request and accept financial assistance from the Ohio Public Works Commission as identified in the attached legislation; (2) to the best of his/her knowledge and belief, all representations that are part of this application are true and correct; (3) all official documents and commitments of the applicant that are part of this application have been duly authorized by the governing body of the applicant; and, (4) should the requested financial assistance be provided, that in the execution of this project, the applicant will comply with all assurances required by Ohio Law, including those involving Buy Ohio and prevailing wages.

**Applicant certifies that physical construction on the project as defined in the application has NOT begun, and will not begin until a Project Agreement for this project has been executed with the Ohio Public Works Commission. Action to the contrary will result in termination of the agreement and withdrawal of Ohio Public Works Commission funding from the project.**

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Certifying Representative (Printed form, Type or Print Name and Title)

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Original Signature / Date Signed



**RESOLUTION NO. 22-1243  
AUGUST 16, 2022**

**RESOLUTION AUTHORIZING THE MONTGOMERY COUNTY ENGINEER'S OFFICE TO PREPARE AND SUBMIT APPLICATIONS TO PARTICIPATE IN THE OHIO PUBLIC WORKS COMMISSION (OPWC) STATE CAPITAL IMPROVEMENT PROGRAM (SCIP) OR THE LOCAL TRANSPORTATION IMPROVEMENT PROGRAM (LTIP), AND TO EXECUTE CONTRACTS AS REQUIRED FOR PROJECT APPLICATIONS TO BE SUBMITTED FOR ROUND 2022-2023 (FISCAL YEAR 2024) AS SHOWN IN ATTACHED EXHIBIT "A".**

WHEREAS, the Montgomery County Engineer's Office has been notified that OPWC Program Funds will be available to jurisdictions within the area covered by the District 4 Public Works Integrating Committee for Round 2022-2023 (Fiscal Year 2024); and

WHEREAS, the OPWC's State Capital Improvement Program and the Local Transportation Improvement Program both provide financial assistance to political subdivisions for public infrastructure projects; and

WHEREAS, the Montgomery County Engineer's Office is planning to construct the capital improvements listed in Exhibit "A"; and

WHEREAS, the Montgomery County Engineer's Office commits to funding all local share project costs exceeding the total of the OPWC's grants and/or loans received; and

WHEREAS, the County Administrator is the County's authorized agent to sign the OPWC applications and subsequent contracts for project applications to be submitted for Round 2022-2023 (Fiscal Year 2024); and

WHEREAS, the Montgomery County Engineer's Office is authorized to provide additional information concerning the projects listed in Exhibit "A" and commits to meeting the reporting requirements for OPWC.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Montgomery County, Ohio, that the resolution authorizing the transmittal of the applications and entering into of any agreements necessary and appropriate for obtaining OPWC funds as described above for the projects listed in Exhibit "A", be and is hereby approved.

**BE IT FURTHER RESOLVED** that the Clerk shall certify a copy of this resolution to the County Engineer. The County Engineer shall forward a copy of the certified resolution to the OPWC's District 4 Public Works Integrating Committee. The resolution is also available on Montgomery County, Ohio's website at <http://www.mcoho.org>.

GES:th

**RESOLUTION NO: 22-1243  
AUGUST 16, 2022**

**CERTIFICATE**

Ms. Dodge moved the adoption of the foregoing resolution. It was seconded by Mrs. Lieberman, and upon call of the roll the following vote resulted:

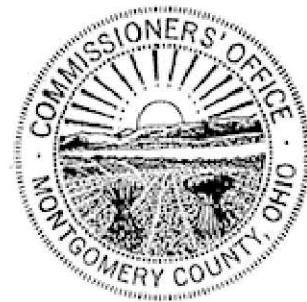
Ms. Dodge, aye; Mrs. Lieberman, aye; Mrs. Rice, aye: Carried.



I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the Board of County Commissioners of Montgomery County, Ohio, on the 16th day of August, 2022.

THE BOARD OF COUNTY COMMISSIONERS HEREBY FINDS AND DETERMINES THAT ALL FORMAL ACTIONS RELATIVE TO THE ADOPTION OF THIS RESOLUTION WERE TAKEN IN AN OPEN MEETING OF THIS BOARD OF COUNTY COMMISSIONERS, AND THAT ALL DELIBERATIONS OF THIS BOARD OF COUNTY COMMISSIONERS, AND OF ITS COMMITTEES, IF ANY WHICH RESULTED IN FORMAL ACTION, WERE TAKEN IN MEETINGS OPEN TO THE PUBLIC, IN FULL COMPLIANCE WITH APPLICABLE LEGAL REQUIREMENTS, INCLUDING SECTION 121.22 OF THE REVISED CODE.

Emily Bradford, Clerk  
Board of County Commissioners  
Montgomery County, Ohio



## Exhibit A

### Ohio Public Works Commission (OPWC) Round 2022-2023 State Capital Improvement Program (SCIP) and Local Transportation Improvement Project (LTIP) Applications

OPWC SCIP Project Application	Job Number	Program Manager	SCIP Project Total Costs	Total SCIP Request	SCIP Grant Request	SCIP Loan Request	MCEO Road A&G	Funds from Other Sources	SCIP Loan Term
Mad River Road Resurfacing (PID 116873)	2022-12	Joe Dura	\$ 874,500	\$ 200,000	\$ 50,000	\$ 150,000	\$ 166,284	\$ 508,216	5-years
Shoup Mill Road Reconstruction (PID 110332)	2018-20	Joe Dura	\$ 5,016,000	\$ 1,500,000	\$ 1,125,000	\$ 375,000	\$ 998,800	\$ 2,517,200	10-years
Taylorsville Road	2021-18	Cedric McGhee	\$ 1,330,000	\$ 500,000	\$ 250,000	\$ 250,000	\$ 830,000	\$ -	5-years
Wagner Ford Road (HAR-218-1.00)	2021-09	Rick Splawinski	\$ 1,022,000	\$ 500,000	\$ 125,000	\$ 375,000	\$ 522,000	\$ -	10-years
Wenger Road (CLT-20B-2.06)	2021-17	David Shields	\$ 409,500	\$ 409,500	\$ 102,375	\$ 307,125	\$ -	\$ -	10-years

OPWC LTIP Project Application	Job Number	Program Manager	LTIP Project Total Costs	LTIP Grant Request		MCEO Road A&G	Funds from Other Sources	
Mad River Road Resurfacing (PID 116873)	2022-12	Joe Dura	\$ 874,500	\$ 200,000		\$ 166,284	\$ 508,216	
Shoup Mill Road Reconstruction (PID 110332)	2018-20	Joe Dura	\$ 5,016,000	\$ 1,100,000		\$ 1,398,800	\$ 2,517,200	
Taylorsville Road	2021-18	Cedric McGhee	\$ 1,330,000	\$ 332,500		\$ 997,500	\$ -	
Wagner Ford Road (HAR-218-1.00)	2021-09	Rick Splawinski	\$ 1,022,000	\$ 200,000		\$ 822,000	\$ -	
Wenger Road (CLT-20B-2.06)	2021-17	David Shields	\$ 409,500	\$ 195,000		\$ 214,500	\$ -	

# MONTGOMERY COUNTY ENGINEER'S OFFICE CHIEF FINANCIAL OFFICERS CERTIFICATION

I, Ronelle Kinney, Comptroller, of the Montgomery County Engineer's Office, hereby certify that the Montgomery County Engineer's Office will have the amount of \$316,284.00 available in the Road A&G Fund. A Sum of \$150,000.00 amount will be used to repay the SCIP or RLP loan requested, and a sum of \$166,284.00 amount will be used to pay the remainder contractor balance for the Mad River Road Resurfacing project, Miami and Washington Townships, Job #2022-12, over a 5-year term.

Round PY37 (FY24)

Project Name: MOT-Mad River Road resurfacing

Loan Amount	\$150,000.00
Grant Amount	\$50,000.00
Road A&G	\$166,284.00

These funds will be available for repayment use July 1, 2023, immediately after formal project approval.

  
\_\_\_\_\_  
Ronelle Kinney, Comptroller  
Montgomery County Engineer's Office

Date: 7/27/22

PROJECT: MOT-CR79-0.00, PID 116873  
 Mad River Road Resurfacing in Miami and Washington Township  
 Dayton Corporation Limit to 500 feet east of Peters Pike  
 AGENCY: MONTGOMERY COUNTY ENGINEERS OFFICE

OPWC ENGINEER'S ESTIMATE

REF NO.	ITEM	ITEM EXT	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL PRICE
<b>PAVEMENT</b>							
1	253	01001	Pavement Repair, As Per Plan	SQ YD	50	\$163.50	\$ 8,175.00
2	254	01001	Pavement Planing, Asphalt Concrete, 1 1/2", As Per Plan	SQ YD	55734	\$2.32	\$ 129,397.63
3	407	20000	Non-Tracking Tack Coat	GAL	5,573	\$3.27	\$ 18,223.71
4	441	50000	Asphalt Concrete, Surface Course, Type 1, (448), PG64-22	CU YD	2,180	\$207.10	\$ 451,478.00
5	690	12150	Special - Asphalt Rejuvenating Agent	GAL	3,623	\$27.25	\$ 98,726.75
<b>TRAFFIC CONTROL</b>							
6	621	00100	RPM	EACH	272	\$59.95	\$ 16,306.40
7	642	00100	Edge Line, 4", Type 1	MILE	7.25	\$588.60	\$ 4,267.35
8	642	00200	Lane Line, 4", Type 1	MILE	0.03	\$21,800.00	\$ 722.54
9	642	00300	Center Line, Type 1	MILE	3.94	\$1,635.00	\$ 6,441.90
10	644	00400	Channelizing Line, 8"	FT	956.00	\$1.78	\$ 1,698.53
11	644	00500	Stop Line	FT	36.00	\$54.50	\$ 1,962.00
12	644	01300	Lane Arrow	EACH	20.00	\$111.18	\$ 2,223.60
<b>INCIDENTALS</b>							
13	614	11001	Maintaining Traffic, As Per Plan	LUMP	1	\$55,376.60	\$ 55,376.60

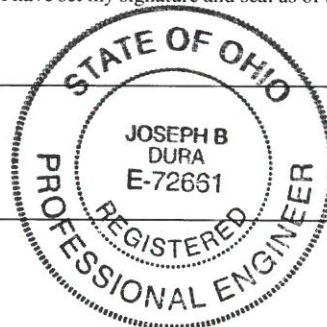
SUB TOTAL = \$ 795,000.00  
 CONTINGENCY 10% \$ 79,500.00  
**GRAND TOTAL = \$ 874,500.00**

CERTIFICATION

I hereby certify the above estimate to be realistic based on the level of detail currently available for this project; in evidence whereof, I have set my signature and seal as of this date.

*Joseph B. Dura*  
 \_\_\_\_\_  
 Joseph B. Dura  
 Ohio Engineer's License #72661

*7/27/2022*  
 \_\_\_\_\_  
 Date



**Mad River Road Resurfacing, PID 116873, Job #2022-12**

A weighted useful life statement stamped/sealed and signed by a licensed professional engineer must be included with the project application.

This spreadsheet has formulas to make a weighted useful life calculation and is populated with an example for illustrative purposes. Items can be added to column a.

**Weighted Useful Life & Design Service Capacity Calculations**

Major Component	Cost (\$1,000)	Portion Repair / Replacement (%)	Repair / Replace Product	Useful Life (Years)	Useful Life Product
Full-depth road construction w/ drainage				25	
Full-depth road construction w/o drainage				25	
Partial-depth road construction w/ drainage				15	
Partial-depth road construction w/o drainage	739.623			15	11094.35
Storm Sewers				40	
Sanitary Sewers				40	
Water Lines				40	
Bridge				75	
Pumps, Lift Stations				15	
Sidewalks				25	
Bike Facility				7	

<b>Totals</b>	<b>739.623</b>				<b>11094.35</b>
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Weighted Useful Life: 15.0 Years

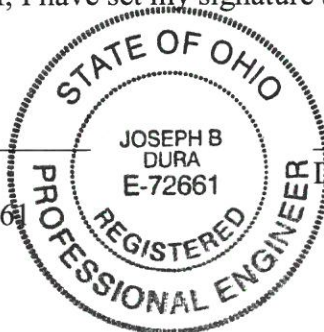
Design Service Capacity (Project Application, Section 2.0):

Portion Repair / Replace %  
 Portion New / Expansion 100 %

**USEFUL LIFE CERTIFICATION**

I hereby certify that this project has an expected useful life of normal usage in this specific situation; in evidence, whereof, I have set my signature and seal as of this date.

*Joseph B. Dura*  
 Joseph B. Dura  
 Ohio Engineer's License #72661



*7/27/2022*

Date

# OHIO PUBLIC WORKS COMMISSION DISTRICT 4

## Round 2022-2023 Supplemental Questionnaire

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**Applicant:** \_\_\_\_\_

**Project Title:** \_\_\_\_\_

### Application Summary:

**Briefly describe the project:**





## Addresses District Infrastructure Needs:

<b>Is this project located in more than one community? (Circle One)</b>		
Yes	No	
<b>What percentage of the community will be served by this project? (Circle One)</b>		
Less than 25%	25% to 40%	More than 40%

## Economic Development

<b>How many jobs are being created as a result of this project?</b>	
<b>How many jobs will be retained as a result of this project?</b>	
<b>Why is it necessary to fund this improvement to secure this development?</b>	
<b>What type of industry is proposed in this development?</b>	

## Relieve Existing Traffic Congestion:

<b>What is the level of service?</b>	
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## Other Factors

What other factors exist that make this project more important than other like projects?

# MAD RIVER ROAD RESURFACING



MAD RIVER ROAD RESURFACING, PID 116873, Job #2022-12  
SR-725 TO KETTERING CORPORATION LINE



Looking north along Mad River Road  
Approximately 220 ft south of Bellsburg Dr.



Looking north along Mad River Road  
Approximately 400 ft north of Rahn Rd.

# Montgomery County Engineer's Office Traffic Department

Location : Mad River Road  
 Cross Street : 525' N of Rahn Road  
 By : KRL

Site: 21 349  
 6/28/2021  
 Monday

## 24 Hour Volume

Interval Start	Northbound	Southbound	Combined	Interval Start	Northbound	Southbound	Combined	
7:00 AM	33	156	189	7:00 PM	52	191	243	
7:15 AM	31		79	7:15 PM	54		112	
7:30 AM	37		77	7:30 PM	45		79	
7:45 AM	55		110	7:45 PM	40		79	
8:00 AM	35	191	226	8:00 PM	47	151	238	
8:15 AM	43		86	8:15 PM	41		79	
8:30 AM	65		120	8:30 PM	32		80	
8:45 AM	48		105	8:45 PM	31		51	
9:00 AM	48	177	225	9:00 PM	28	96	124	
9:15 AM	44		90	9:15 PM	30		52	
9:30 AM	45		99	9:30 PM	19		37	
9:45 AM	40		82	9:45 PM	19		37	
10:00 AM	44	185	229	10:00 PM	17	51	68	
10:15 AM	46		86	10:15 PM	18		28	
10:30 AM	48		88	10:30 PM	8		21	
10:45 AM	47		106	10:45 PM	8		23	
11:00 AM	45	203	248	11:00 PM	15	32	47	
11:15 AM	47		93	11:15 PM	3		12	
11:30 AM	57		115	11:30 PM	4		10	
11:45 AM	54		115	11:45 PM	10		14	
12:00 PM	56	239	295	6/29/2021 12:00 AM	2	13	15	
12:15 PM	54		122	12:15 AM	3		8	
12:30 PM	66		126	12:30 AM	2		6	
12:45 PM	63		123	12:45 AM	6		8	
1:00 PM	64	229	293	1:00 AM	2	10	12	
1:15 PM	67		126	1:15 AM	3		8	
1:30 PM	38		93	1:30 AM	1		2	
1:45 PM	60		121	1:45 AM	4		7	
2:00 PM	82	256	338	2:00 AM	1	4	5	
2:15 PM	62		131	2:15 AM	0		0	
2:30 PM	60		132	2:30 AM	2		4	
2:45 PM	52		112	2:45 AM	1		1	
3:00 PM	60	233	293	3:00 AM	3	6	9	
3:15 PM	64		137	3:15 AM	1		2	
3:30 PM	54		141	3:30 AM	1		1	
3:45 PM	55		126	3:45 AM	1		3	
4:00 PM	61	248	309	4:00 AM	0	6	6	
4:15 PM	70		139	4:15 AM	1		2	
4:30 PM	55		129	4:30 AM	1		6	
4:45 PM	62		143	4:45 AM	4		6	
5:00 PM	59	261	320	5:00 AM	6	17	23	
5:15 PM	77		155	5:15 AM	0		2	
5:30 PM	68		146	5:30 AM	6		14	
5:45 PM	57		106	5:45 AM	5		13	
6:00 PM	44	215	259	6:00 AM	4	88	92	
6:15 PM	63		121	6:15 AM	18		37	
6:30 PM	56		115	6:30 AM	29		48	
6:45 PM	52		92	6:45 AM	37		61	

Volume Totals			
	Northbound	Southbound	Combined
12:00 AM - 12:00 PM	1056 (49.6%)	1071 (50.4%)	2127
12:00 PM - 12:00 AM	2202 (49.0%)	2295 (51.0%)	4497
24 Hours	3258 (49.2%)	3366 (50.8%)	6624

Peak Hours			
12:00 AM - 12:00 PM			
	Northbound	Southbound	Combined
Started	8:30 AM	11:00 AM	11:00 AM
Volume	205	215	418
Factor	0.79	0.88	0.91

12:00 PM - 12:00 AM			
	Northbound	Southbound	Combined
Started	4:45 PM	4:45 PM	4:45 PM
Volume	266	324	590
Factor	0.86	0.93	0.95

**RESOLUTION NO. 22-1096  
JULY 12, 2022**

**RESOLUTION AUTHORIZING THE EXECUTION OF AN LPA/FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) FOR THE MOT-MAD RIVER ROAD RESURFACING PROJECT, PID 116873, JOB #2022-12.**

**WHEREAS**, ODOT has been designated as the agency in Ohio to administer Federal Highway Administration federal funding programs; and

**WHEREAS**, the LPA/Federal Project Agreement, PID 116873, Agreement No. 37564 sets forth requirements associated with the Federal funds available for the project and establishes responsibilities for the local administration of the project; and

**WHEREAS**, the Montgomery County Engineers Office agrees to share in the project costs; and

**WHEREAS**, the Montgomery County Engineers Office agrees to secure or provide all other financial resources necessary to fully complete the project, including all cost overruns and project claims.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Montgomery County, Ohio, that the resolution authorizing the execution of an LPA/Federal Local-Let Project Agreement with the Ohio Department of Transportation for the rehabilitation or replacement of the MOT-Mad River Road Resurfacing Project, PID 116873, Job #2022-12, be and is hereby approved.

**BE IT FURTHER RESOLVED** that the clerk shall return two originals to the County Engineer for final execution by the Ohio Department of Transportation, then certify this Resolution and make an imaged copy. This Resolution is available on the Montgomery County, Ohio, website at <http://www.mcohio.org>.

JBD:ee

**RESOLUTION NO: 22-1096  
JULY 12, 2022**

**CERTIFICATE**

Mrs. Lieberman moved the adoption of the foregoing resolution. It was seconded by Ms. Dodge, and upon call of the roll the following vote resulted:

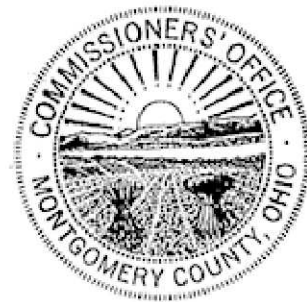
Mrs. Lieberman, aye; Ms. Dodge, aye; Mrs. Rice, aye: Carried.



I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the Board of County Commissioners of Montgomery County, Ohio, on the 12th day of July, 2022.

THE BOARD OF COUNTY COMMISSIONERS HEREBY FINDS AND DETERMINES THAT ALL FORMAL ACTIONS RELATIVE TO THE ADOPTION OF THIS RESOLUTION WERE TAKEN IN AN OPEN MEETING OF THIS BOARD OF COUNTY COMMISSIONERS, AND THAT ALL DELIBERATIONS OF THIS BOARD OF COUNTY COMMISSIONERS, AND OF ITS COMMITTEES, IF ANY WHICH RESULTED IN FORMAL ACTION, WERE TAKEN IN MEETINGS OPEN TO THE PUBLIC, IN FULL COMPLIANCE WITH APPLICABLE LEGAL REQUIREMENTS, INCLUDING SECTION 121.22 OF THE REVISED CODE.

Emily Bradford, Clerk  
Board of County Commissioners  
Montgomery County, Ohio



MOT-MAD RIVER ROAD  
RESURFACING  
COUNTY-ROUTE-SECTION116873  
PID NUMBER37564  
AGREEMENT NUMBER**SAM Unique Entity ID: VP74BLN1XAX1****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 Montgomery County engineer's Office, hereinafter referred to as the LPA, 451 West Third Street, PO Box 972, Dayton, Ohio 45422.

**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 MOT-Mad River Road Resurfacing (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.
- 2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form before the first required submission of the Project's Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization, for Construction, until the Form has been completed



and approved. Failure to submit a completed Form will result in the Project reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program, until the Form is completed and approved by the Department.

3. FUNDING

- 3.1 The total cost for the PROJECT is estimated to be \$784,105 as set forth in Attachment 1. ODOT shall provide to the LPA 70 percent of the eligible costs, up to a maximum of \$548,873 in Federal 4TA7 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 previously approved by ODOT 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: ODOT's Office of Local Programs
- 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 ODOT's Office of Contracts. 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 criterion 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 LAMP 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:

Montgomery County Engineer's Office
451 W. Third Street, P.O. Box 972
Dayton, Ohio 45422

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.

8.13 The LPA shall be responsible for verifying that a C92 GoFormz has been completed by the prime contractor for each subcontractor and material supplier working on the project, prior to starting work. This requirement will be routinely monitored by the District Construction Monitor to ensure compliance.

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**

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 Good Faith Effort(s) (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.
- 12.6 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:

Paul W. Gruner, P.E., P.S.	Blake A. Simpson, P.E.
Montgomery County Engineer's Office	Ohio Department of Transportation
451 W. Third Street, PO Box 972	1001 St. Marys Avenue
Dayton, Ohio 45422	Sidney, Ohio 45365
grunerp@mcohio.org	Blake.Simpson@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.]

- 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.

1 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.

2 [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



**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.



**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 LPA 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

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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.

- 3 [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 [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.

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 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.

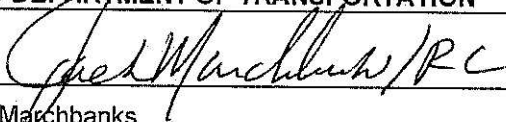
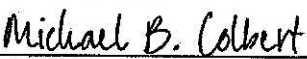
- 15.5 *Ohio Ethics Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.
- 15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, 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.

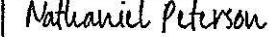
- 15.8 *Lobbying:* Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it 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.

LPA: BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By: 
Title: Carolyn Rice President	Jack Marchbanks Director
By:	Date: 7/20/2022
Title: Deborah A. Lieberman Commissioner	
By:	
Title: Judy Dodge Commissioner	
OR	
DocuSigned by:	
By: 	
Title: Michael B. Colbert County Administrator Montgomery County, Ohio	
Date: 7/12/2022	

APPROVED TO AS FORM: MATHIAS H. HECK, JR., PROSECTUTING ATTORNEY

By:   
6AD740747ED8430...  
 Assistant Prosecuting Attorney

Date: 7/5/2022



**Attachment 1 PID: 116873 C-R-S: MOT-Mad River Road Resurfacing**

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

SOURCES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTALS
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT COSTS										\$0
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS COSTS										\$0
RIGHT OF WAY ACQUISITION & UTILITY RELOCATION COSTS										\$0
RIGHT OF WAY SERVICES COSTS										\$0
PROJECT CONSTRUCTION COSTS	\$217,807	30%	LNTP	\$508,216	70%	4TA7				\$726,023
CONSTRUCTION ENGINEERING / INSPECTION COSTS	\$17,425	30%	LNTP	\$40,657	70%	4TA7				\$58,082
<b>TOTALS</b>	<b>\$235,232</b>		<b>LNTP</b>	<b>\$548,873</b>		<b>4TA7</b>				<b>\$784,105</b>

**Attachment 2**

\_\_\_\_\_  
COUNTY-ROUTE-SECTION

\_\_\_\_\_  
PID NUMBER

\_\_\_\_\_  
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:	<b>Error! Reference source not found.</b>
Oaks Vendor ID:	0000000000
Mailing Address:	<b>Error! Reference source not found.</b>
	<b>Error! Reference source not found.</b>
LPA signature:	

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