AGENDA
ATHENS CITY COUNCIL
MONDAY, JUNE 9, 2025
7:00 PM
e-mail: dwalker@ci.athens.oh.us
Streaming is available at www.ci.athens.oh.us/video

COMMITTEE OF THE WHOLE:

- Columbus Road Shared-Use Path Project #365 (update/amendment)
- Easement with the State of Ohio (Project #357)
- Issue I Program Funds (submit application)

CITY & SAFETY SERVICES:

- Public Safety Training Center & Kenny Drive Project #373 (additional appropriations and ODOT grant agreement)

PLANNING & DEVELOPMENT COMMITTEE:

- Title 49 Permit Application (107 East State, continued use of residential parking on unused City alleyway)

4. SPECIAL SESSION

5. Establish Quorum

6. Ordinances for Third Reading:

0-56-25
AN ORDINANCE REZONING A 5.13 ACRES, LOCATED AT 111 HOOPER STREET FROM R-1 AND R-2 ZONES TO AN R-3 ZONE. Introduced by Council Member Swank

0-58-25
AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, FOR THE STATE ROUTE 682/56 ROUNDABOUT, PROJECT #357; AND DECLARING AN EMERGENCY.
Introduced by Council member Spjeldnes

0-59-25
AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, FOR THE REHABILITATION OF THE STIMSON AVENUE BRIDGE, PROJECT #358; AND DECLARING AN EMERGENCY.
Introduced by Council Member Spjeldnes

0-60-25
AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, FOR THE COLUMBUS ROAD SHARED USE PATH, PROJECT #365; AND DECLARING AN EMERGENCY.
Introduced by Council Member Spjeldnes

0-61-25
AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, TO UPGRADE ADA CURB RAMPS IN THE CITY OF ATHENS, PROJECT #366; AND DECLARING AN EMERGENCY.
Introduced by Council Member Spjeldnes

0-62-25
AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, FOR THE EAST STATE STREET SIGNAL IMPROVEMENTS, PROJECT #367; AND DECLARING AN EMERGENCY.
Introduced by Council Member Spjeldnes

7. Ordinances for Second Reading:

0-63-25
AN ORDINANCE AMENDING THE 2025 APPROPRIATION ORDINANCE; AUTHORIZING THE AUDITOR TO MAKE INTERFUND TRANSFERS; AMENDING ORDINANCE 145-23 THAT AUTHORIZED CONSTRUCTION OF THE NEW FIRE HEADQUARTERS, PROJECT #346; AND DECLARING AN EMERGENCY.
Introduced by Council Member McCarey

0-64-25
AN ORDINANCE AMENDING ORDINANCE 121-24; AUTHORIZING 2025 STAFFING

LEVELS.
Introduced by the Finance & Personnel Committee

0-65-25
AN ORDINANCE AMENDING ORDINANCE 37-25; THE 2025 APPROPRIATION ORDINANCE 115-24.
Introduced by Council Member Risner

0-66-25
AN ORDINANCE GRANTING A SPECIAL RIGHT-OF-WAY USE PERMIT AT 75 KIMES LANE TO MAINTAIN EXISTING SIGNAGE IN THE CITY RIGHT-OF-WAY AT US 50 AND NORTH BLACKBURN ROAD.
Introduced by Council Member Swank

8. Ordinances for First Reading:

- **0-67-25**
  AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO A GRANT AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE EXTENSION OF KENNY DRIVE AS PART OF THE PUBLIC SAFETY TRAINING FACILITY, PROJECT #373.
  Introduced by Council Member Thomas

- **0-68-25**
  AN ORDINANCE AMENDING ORDINANCE 108-24; AUTHORIZING DESIGN AND CONSTRUCTION OF A PUBLIC SAFETY TRAINING FACILITY, PROJECT #373.
  Introduced by Council Member Thomas

- **0-69-25**
  AN ORDINANCE AFFIRMING AN EASEMENT FROM THE STATE OF OHIO AS GRANTOR TO THE CITY OF ATHENS, GRANTEE, NECESSARY FOR THE CONSTRUCTION OF THE STATE ROUTE 682/56 ROUNDABOUT, PROJECT #357.
  Introduced by Council Member Spjeldnes

- **0-70-25**
  AN ORDINANCE AUTHORIZING THE MAYOR TO SUBMIT AN APPLICATION TO PARTICIPATE IN THE STATE CAPITAL IMPROVEMENT AND/OR LOCAL TRANSPORTATION IMPROVEMENT PROGRAM(S) FOR ISSUE I FUNDS; AND TO EXECUTE CONTRACTS AS REQUIRED.
  Introduced by Council Member Spjeldnes

- **0-71-25**
  AN ORDINANCE GRANTING A SPECIAL RIGHT-OF-WAY USE PERMIT AT 107 AND 107 1/2 EAST STATE STREET TO ALLOW CONTINUED USE FOR RESIDENTIAL PARKING ON AN UNUSED CITY ALLEYWAY.
  Introduced by Council Member Swank

- **<u>0-72-25</u>**
  AN ORDINANCE AMENDING ORDINANCE 57-25; CONSTRUCTION OF THE COLUMBUS ROAD SHARED USE PATH, PROJECT #365.
  Introduced by Council Member Spjeldnes

9. Adjournment

Sam Crowl
President of Council

The City of Athens supports the Americans with Disabilities Act. Requests for reasonable accommodation may be made with the ADA Coordinator in the City Building or by calling 592-3367.

0-56-25

Introduced by Alan Swank, Chair
Planning and Development Committee

AN ORDINANCE REZONING A 5.13 ACRES, LOCATED AT 111 HOOPER STREET FROM R-1 AND R-2 ZONES TO AN R-3 ZONE.

WHEREAS, on April 2, 2025, the Athens City Planning Commission recommended to rezone, from R-1 and R-2 to R-3, portions of Hooper Street; and

WHEREAS, said rezoning would allow for the development of affordable multifamily housing to serve below median income residents, and is consistent with the Athens 2040 Comprehensive Plan; and

WHEREAS, Athens City Council has scheduled a public hearing on June 2, 2025, in accordance with the Planning Commission's recommendation;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Eight (8) parcels, 5.13 acres, located at 111 Hooper Street, are hereby rezoned from an R-1 zone, Residential, One-Family, and R-2 zone, Residential, One-Family/Two Family, to an R-3 zone, Residential, Multi-Family Zone, described more particularly in the map attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

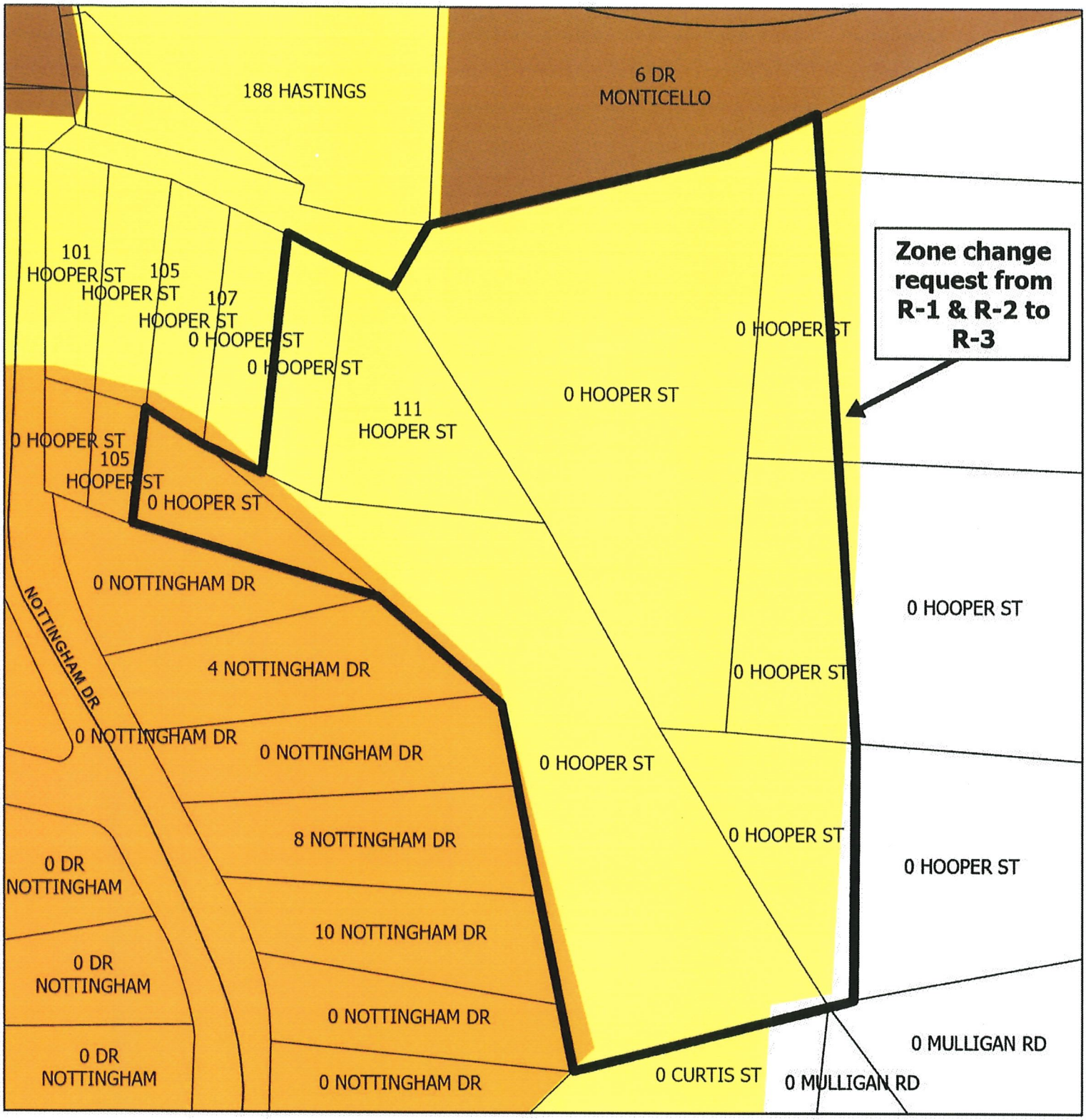
_____
President of Council

ATTEST:

_____
Clerk of Council

APPROVED:

_____
Mayor



Hooper St. Zone Change

0 50 100 200 Feet

N

Request to rezone lots on Hooper Street from R-1 Residential, One-Family Zone and R-2 Residential, One-Family/Two-Family Zone to R-3 Residential, Multi-Family Zone.

Legend

Parcel

Zoning

R-1 R-3

R-2

Map created by Athens City Planner. Data recent as of 1/2/2025.

0-58-25

Introduced by Solveig Spjeldnes, Chair
Transportation Committee

AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, FOR THE STATE ROUTE 682/56 ROUNDABOUT, PROJECT #357; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The Service-Safety Director is hereby authorized to enter into an LPA Federal Local-Let Project Agreement, PID Number 118279. The ATH-56-11.267 project will remove the existing traffic signal, and construct a roundabout at the intersection of Union Street (S.R. 56) and (S.R. 682). The project will include drainage system adjustments, new intersection lighting, and pedestrian facilities along the corridor, a copy of which is attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall be an emergency measure necessary for the preservation of the health, welfare and safety of the residents of the City of Athens, Ohio, in order to meet the timeline for federal funding of City Project #357, and that it shall be in full force and effect upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

APPROVED:

_____
Clerk of Council

_____
Mayor

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and **the City of Athens (LPA), 8 East Washington Street, Athens, Ohio 45701.**

1. PURPOSE

1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.

1.2 Section 5501.03 (D) of the **Ohio Revised Code** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.

1.3 The **THE ATH-56-11.267 PROJECT WILL REMOVE THE EXISTING TRAFFICSIGNAL AND CONSTRUCT A ROUNDABOUT AT THE INTERSECTIONOF UNION ST (S.R. 56) AND (S.R. 682). THE PROJECT WILL INCLUDEDRAINAGE SYSTEM ADJUSTMENTS, NEW INTERSECTION LIGHTING, AND PEDESTRIAN FACILITIES ALONG THE CORRIDOR.** (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. FEDERAL

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

- 40 USC §§ 1101-1104 – "Selection of Architects and Engineers"
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

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

C. ODOT

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

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

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (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 ODOT.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be $ 4,754,606.02 as set forth in Attachment 1. ODOT shall provide to the LPA 100 percent of the eligible costs, up to a maximum of $ $2,295,588 in Federal Safety funds (SAC 4HJ7). 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 improvements and construction engineering/inspection activities of the PROJECT.

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

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 recognized set of written design standards may be either the LPA's formally written local design standards that have been **reviewed and accepted** by ODOT **or**

ODOT's Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.

4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: 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 (NEPA) and related regulations, including but not limited to 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(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.

5.6 The LPA shall submit a Notice of Intent to the 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 (1) 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 Best Management Practice(BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

6.1 All R/W Acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.

6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.

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 procedures.

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 any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.

6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Certification of Right of Way Control Letter, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all 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.

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. Consistent with Sections 6.1 and 6.4 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 6.1 and 6.4 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.

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

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

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 Manager 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 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 letting the contracts.

7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 ODOT 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30%of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.

7.7 In accordance with ORC 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% 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%locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% 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 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 Per ORC 9.75(B), 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 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 is requesting 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 daily 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 (STATE). ODOT shall pay the Contractor or reimburse the LPA within 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's 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 mechanic's lien is resolved.

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

Saleh Eldabaja, City Engineer and Director of Public Works
City of Athens
8 East Washington Street
Athens, Ohio 45701

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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.

8.11 After completion of the PROJECT, and in accordance with 23 USC 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 six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (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.

8.14 The LPA shall be responsible for monitoring all DBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the LATP Manual of Procedures.

8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

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

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 U.S. DOT, 49 CFR 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 consultant(s) and/or contractor(s) performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultant(s) and/or contractor(s) shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices, or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.

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

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 neglect or failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 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 the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.

12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

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 ORC 126.30.

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:

Service-Safety Director	District Deputy Director
City of Athens	Ohio Department of Transportation
8 East Washington Street	338 Muskingum Drive
Athens, Ohio 45701	Marietta, Ohio 45750
astone@ci.athens.oh.us	rich.oster@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[1], ***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.

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. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.** [2]

(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.** [3]

(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.** [4]

(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

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2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 %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% 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.

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.

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 subrecipient 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 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 (3) years after FHWA approves the LPA's final Federal voucher for reimbursement of project expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

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

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

15.5 *Ohio Ethics and Conflict of Interest Laws*: LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics and Conflict of Interest laws as provided by ORC 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.

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 ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The STATE does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its contractor(s), subcontractor(s), and any agent of the contractor(s) or its subcontractor(s), 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 ORC 153.02 or 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. 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: CITY OF ATHENS	**STATE OF OHIO** **OHIO DEPARTMENT OF TRANSPORTATION**
By:	By:
Title:	Pamela Boratyn Director
Date:	Date:

0-59-25

Introduced by Solveig Spjeldnes, Chair
Transportation Committee

AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, FOR THE REHABILITATION OF THE STIMSON AVENUE BRIDGE, PROJECT #358; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The Service-Safety Director is hereby authorized to enter into an LPA Federal Local-Let Project Agreement and Agreement Amendment. The ATH-Stimson Avenue Bridge Rehab project, PID Number 118520, is for rehabilitation of the Stimson Avenue Bridge over the Hocking River and approach roadway work, a copy of the agreement and agreement amendment are attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall be an emergency measure necessary for the preservation of the health, welfare and safety of the residents of the City of Athens, Ohio, in order to meet the timeline for federal funding of City Project #358, and that it shall be in full force and effect upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

APPROVED:

_____
Clerk of Council

_____
Mayor

ATH-STIMSON AVE BRIDGE REHAB
COUNTY-ROUTE-SECTION
118520
PID NUMBER
42061
AGREEMENT NUMBER
081281289
SAM UNIQUE ENTITY ID

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and the **City of Athens** (LPA), 8 East Washington Street, Athens, Ohio 45701.

1. PURPOSE

1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.

1.2 Section 5501.03 (D) of the **Ohio Revised Code** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.

1.3 **The rehabilitation of the Stimson Avenue Bridge over the Hocking River and approach roadway work** (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. FEDERAL

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

B. STATE

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

C. ODOT

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

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

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (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 ODOT.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be **$ 4,705.884.41** as set forth in Attachment 1. ODOT shall provide to the LPA 95 percent of the eligible costs, up to a maximum of **$ 4,715,385.00** in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Local Major Bridge Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the improvements and construction engineering/inspection activities of the PROJECT.

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

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 recognized set of written design standards may be either the LPA's formally written local design standards that have been **reviewed and accepted** by ODOT **or** ODOT's Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the

LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.

4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: 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 (NEPA) and related regulations, including but not limited to 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(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.

5.6 The LPA shall submit a Notice of Intent to the 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 (1) 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 Best Management Practice (BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

6.1 All R/W Acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.

6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have qualified staff to perform any or all of the respective R/W functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.

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 procedures.

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 any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.

6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Certification of Right of Way Control Letter, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all 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.

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. Consistent with Sections 6.1 and 6.4 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 6.1 and 6.4 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.

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

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

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 Manager 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 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 letting the contracts.

7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 ODOT 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30%of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.

7.7 In accordance with ORC 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% 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%locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% 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 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 Per ORC 9.75(B), 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 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 is requesting 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 daily 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 (STATE). ODOT shall pay the Contractor or reimburse the LPA within 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's 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 mechanic's lien is resolved.

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

City of Athens
8 East Washington Street
Athens, Ohio 45701

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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.

8.11 After completion of the PROJECT, and in accordance with 23 USC 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 six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (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.

8.14 The LPA shall be responsible for monitoring all DBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the LATP Manual of Procedures.

8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

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

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 U.S. DOT, 49 CFR 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 consultant(s) and/or contractor(s) performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultant(s) and/or contractor(s) shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices, or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.

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

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 neglect or

failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 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 contract 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 the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.

12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

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 ORC 126.30.

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:

Service-Safety Director	District Deputy Director
City of Athens	Ohio Department of Transportation
8 East Washington Street	338 Muskingum Drive
Athens, Ohio 45701	Marietta, Ohio 45750
astone@ci.athens.oh.us	rich.oster@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[1], ***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.

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. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.** [2]

(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.** [3]

(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.** [4]

(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

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2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 %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% 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.

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.

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 subrecipient 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 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 (3) years after FHWA approves the LPA's final Federal voucher for reimbursement of project expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

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

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

15.5 *Ohio Ethics and Conflict of Interest Laws*: LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics and Conflict of Interest laws as provided by ORC 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.

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 ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The STATE does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its contractor(s), subcontractor(s), and any agent of the contractor(s) or its subcontractor(s), 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 ORC 153.02 or 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. 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: CITY OF ATHENS	**STATE OF OHIO** **OHIO DEPARTMENT OF TRANSPORTATION**
By:	By:
Title:	Pamela Boratyn Director
Date:	Date:

ATH-STIMSON AVE BRIDGE REHAB
COUNTY-ROUTE-SECTION
118520
PID NUMBER
42061
AGREEMENT NUMBER
081281289
SAM UNIQUE ENTITY ID

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT AMENDMENT is made by and between the **State of Ohio, Department of Transportation**, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and the **City of Athens** (LPA), 8 East Washington Street, Athens, Ohio 45701.

1. PURPOSE

1.1 **The rehabilitation of the Stimson Avenue Bridge over the Hocking River and approach roadway work** (PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.

1.2 **The purpose of this Agreement Amendment is to reflect a $600,000 increase in the federal funds allocated to the project**, as indicated in Section 3.1. All other sections of the Agreement executed on January 6, 2025, shall remain in effect.

3. FUNDING

3.1 The total cost for the construction phase of the PROJECT is estimated to be **$ 5,519,117.76** based upon the recent bid opening. **ODOT shall provide to the LPA 95 percent of the eligible costs, up to a maximum of $ 5,300,000.00 in Federal funds, comprised of 80 percent Local Major Bridge Program funds and 15 percent Toll Revenue Credit funds.** This maximum amount reflects the funding limit for the PROJECT set by the applicable Local Major Bridge Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the improvements and construction engineering/inspection activities of the PROJECT.

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

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

LPA: CITY OF ATHENS	**STATE OF OHIO** **OHIO DEPARTMENT OF TRANSPORTATION**
By:	By:
Title:	Pamela Boratyn Director
Date:	Date:

Revision Date 11/26/2024

0-60-25

Introduced by Solveig Spjeldnes, Chair
Transportation Committee

AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, FOR THE COLUMBUS ROAD SHARED USE PATH, PROJECT #365; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The Service-Safety Director is hereby authorized to enter into an LPA Federal Local-Let Project Agreement, PID Number 119999. The ATH-Columbus Road SUP-Phase I project is for installation of a sidewalk or multi-modal facility to provide 4700' of connectivity from the Athens Corporate limit to the Columbus Road intersection with the Hockhocking Adena Bikeway, a copy of which is attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall be an emergency measure necessary for the preservation of the health, welfare and safety of the residents of the City of Athens, Ohio, in order to meet the timeline for federal funding of City Project #365, and that it shall be in full force and effect upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

APPROVED:

_____
Clerk of Council

_____
Mayor

ATH-COLUMBUS RD SUP-PHASE 1
COUNTY-ROUTE-SECTION
119999
PID NUMBER
42405
AGREEMENT NUMBER
081281289
SAMs UNIQUE ENTITY ID

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the **State of Ohio, Department of Transportation**, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and the **CITY OF ATHENS**, 8 East Washington Street, Athens, Ohio, 45701, hereinafter referred to as the LPA.

1. PURPOSE

1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.

1.2 Section 5501.03 (D) of the **Ohio Revised Code** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.

1.3 **The installation of a sidewalk or multi-modal facility to provide 4700' of connectivity from the Athens Corp limit to the Columbus Road intersection with the Hockhocking Adena bikeway** (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. FEDERAL

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

- 40 USC §§ 1101-1104 – "Selection of Architects and Engineers"
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

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

C. ODOT

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

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

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (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 ODOT.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be **$ 1,422,650.** ODOT shall provide to the LPA 90% of the eligible costs, up to a maximum of **$ 1,032,881** in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Highway Safety Improvement Program (HSIP) Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the improvements and construction engineering/inspection activities of the PROJECT.

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

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 recognized set of written design standards may be either the LPA's formally written local design standards that have been **reviewed and accepted** by ODOT **or** ODOT's

Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.

4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer, to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: 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 (NEPA) and related regulations, including but not limited to 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(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.

5.6 The LPA shall submit a Notice of Intent to the 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 (1) 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 Best Management Practice (BMP) criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

6.1 All R/W Acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.

6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal reviews shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.

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 procedures.

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 any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.

6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Certification of Right of Way Control Letter, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all 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.

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. Consistent with Sections 6.1 and 6.4 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 6.1 and 6.4 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.

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

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

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 Manager 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 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 an addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and letting the contracts.

7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 ODOT 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30% of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.

7.7 In accordance with ORC 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% 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%locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% 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 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 non-financial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

7.10 Per ORC 9.75(B), 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 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 is requesting 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 ensure prompt payment, the measurement of quantities and the recording for payment should be performed daily 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 (STATE). ODOT shall pay the Contractor or reimburse the LPA within 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's 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 mechanic's lien is resolved.

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

Andrew B. Stone, P.E. Service-Safety Director
City of Athens
8 East Washington Street
Athens, Ohio 45701

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, titles, 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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.

8.11 After completion of the PROJECT, and in accordance with 23 USC 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 six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (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.

8.14 The LPA shall be responsible for monitoring all DBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the LATP Manual of Procedures.

8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

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

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

(a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally assisted programs of the U.S. DOT, 49 CFR 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 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 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 consultant(s) and/or contractor(s) performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultant(s) and/or contractor(s) shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices, or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.

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

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 neglect or failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 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 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 contract 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 the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.

12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

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 ORC 126.30.

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:

Andrew B. Stone, P.E. Service-Safety Director	Eric Reed, P.E.
City of Athens	District 10 LPA Coordinator
8 East Washington Street	338 Muskingum Drive
Athens, Ohio 45701	Marietta, OH 45750
E-mail: astone@ci.athens.oh.us	E-mail: eric.reed@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[1], ***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.

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. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.** [2]

(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.** [3]

(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.** [4]

(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

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2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 %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% 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.

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.

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 subrecipient 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 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 (3) years after FHWA approves the LPA's final Federal voucher for reimbursement of project expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

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

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

15.5 *Ohio Ethics and Conflict of Interest Laws*: LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics and Conflict of Interest laws as provided by ORC 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.

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 ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The STATE does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its contractor(s), subcontractor(s), and any agent of the contractor(s) or its subcontractor(s), 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 ORC 153.02 or 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. 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: CITY OF ATHENS, OHIO	**STATE OF OHIO** **OHIO DEPARTMENT OF TRANSPORTATION**
By:	By:
Title:	Pamela Boratyn Director
Date:	Date:

0-61-25

Introduced by Solveig Spjeldnes, Chair
Transportation Committee

AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, TO UPGRADE ADA CURB RAMPS IN THE CITY OF ATHENS, PROJECT #366; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The Service-Safety Director is hereby authorized to enter into an LPA Federal Local-Let Project Agreement, PID Number 119975. The ATH-Curb Ramps Phase I, project is to upgrade deficient curb ramps in the City of Athens, including the full removal/replacement or installation of detectable warnings, a copy of which is attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall be an emergency measure necessary for the preservation of the health, welfare and safety of the residents of the City of Athens, Ohio, in order to meet the timeline for federal funding of City Project #366, and that it shall be in full force and effect upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

APPROVED:

_____
Clerk of Council

_____
Mayor

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and **City of Athens**.

1. PURPOSE

1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.

1.2 Section 5501.03 (D) of the **Ohio Revised Code** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.

1.3 The upgrade of deficient curb ramps in the City of Athens, including the full removal/replacement or installation of detectable warnings. (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. FEDERAL

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

B. STATE

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

C. ODOT

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

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

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (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 ODOT.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be $978,922.21 as set forth in Attachment 1. ODOT shall provide to the LPA 100 percent of the eligible costs, up to a maximum of $1,082,858 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 improvements and construction engineering/inspection activities of the PROJECT.

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

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 recognized set of written design standards may be either the LPA's formally written local design standards that have been **reviewed and accepted** by ODOT **or** ODOT's Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for

ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.

4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: 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 (NEPA) and related regulations, including but not limited to 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(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.

5.6 The LPA shall submit a Notice of Intent to the 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 (1) 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 Best Management Practice(BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

6.1 All R/W Acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.

6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.

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 procedures.

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 any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.

6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Certification of Right of Way Control Letter, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all 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.

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. Consistent with Sections 6.1 and 6.4 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 6.1 and 6.4 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.

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

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

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 Manager 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 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 letting the contracts.

7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 ODOT 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30%of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.

7.7 In accordance with ORC 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% 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%locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% 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 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 Per ORC 9.75(B), 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 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 is requesting 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 daily 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 (STATE). ODOT shall pay the Contractor or reimburse the LPA within 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's 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 mechanic's lien is resolved.

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

City of Athens
8 East Washington Street
Athens, Ohio 45701

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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.

8.11 After completion of the PROJECT, and in accordance with 23 USC 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 six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (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.

8.14 The LPA shall be responsible for monitoring all DBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the LATP Manual of Procedures.

8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

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

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 U.S. DOT, 49 CFR 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 consultant(s) and/or contractor(s) performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultant(s) and/or contractor(s) shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices, or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.

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

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 neglect or

failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 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 the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.

12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

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 ORC 126.30.

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:

Service-Safety Director	District Deputy Director
City of Athens	Ohio Department of Transportation
8 East Washington Street	338 Muskingum Drive
Athens, Ohio 45701	Marietta, Ohio 45750
astone@ci.athens.oh.us	rich.oster@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[1], ***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.

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. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.** [2]

(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.** [3]

(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.** [4]

(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

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2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 %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% 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.

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.

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 subrecipient 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 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 (3) years after FHWA approves the LPA's final Federal voucher for reimbursement of project expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

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

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

15.5 *Ohio Ethics and Conflict of Interest Laws*: LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics and Conflict of Interest laws as provided by ORC 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.

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 ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The STATE does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its contractor(s), subcontractor(s), and any agent of the contractor(s) or its subcontractor(s), 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 ORC 153.02 or 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. 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:	**STATE OF OHIO** **OHIO DEPARTMENT OF TRANSPORTATION**
By:	By:
Title:	Jack Marchbanks Director
Date:	Date:

0-62-25

Introduced by Solveig Spjeldnes, Chair
Transportation Committee

AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, FOR THE EAST STATE STREET SIGNAL IMPROVEMENTS, PROJECT #367; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The Service-Safety Director is hereby authorized to enter into an LPA Federal Local-Let Project Agreement, PID Number 120329. The ATH-East State Street Signal IMP project is to upgrade signals on East State Street, a copy of which is attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall be an emergency measure necessary for the preservation of the health, welfare and safety of the residents of the City of Athens, Ohio, in order to meet the timeline for federal funding of City Project #367, and that it shall be in full force and effect upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

_____
Clerk of Council

APPROVED:

_____
Mayor

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and **City of Athens, 8 East Washington Street, Athens, Ohio 45701** (LPA).

1. PURPOSE

1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.

1.2 Section 5501.03 (D) of the **Ohio Revised Code** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.

1.3 The **Small Cities Congestion Mitigation East State Street Signal Improvements** (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. FEDERAL

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

B. STATE

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

C. ODOT

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

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

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (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 ODOT.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be $736,023.08 as set forth in Attachment 1. ODOT shall provide to the LPA 80 percent of the eligible costs, up to a maximum of $429,658 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 improvements and construction engineering/inspection activities of the PROJECT.

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

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 recognized set of written design standards may be either the LPA's formally written local design standards that have been **reviewed and accepted** by ODOT **or** ODOT's Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for

ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.

4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: 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 (NEPA) and related regulations, including but not limited to 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(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.

5.6 The LPA shall submit a Notice of Intent to the 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 (1) 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 Best Management Practice(BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

6.1 All R/W Acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.

6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.

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 procedures.

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 any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.

6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Certification of Right of Way Control Letter, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all 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.

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. Consistent with Sections 6.1 and 6.4 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 6.1 and 6.4 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.

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

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

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 Manager 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 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 letting the contracts.

7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 ODOT 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30%of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.

7.7 In accordance with ORC 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% 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%locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% 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 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 Per ORC 9.75(B), 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 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 is requesting 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 daily 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 (STATE). ODOT shall pay the Contractor or reimburse the LPA within 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's 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 mechanic's lien is resolved.

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

Andrew B. Stone, P.E., Service-Safety Director
City of Athens
8 East Washington Street
Athens, Ohio 45701

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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.

8.11 After completion of the PROJECT, and in accordance with 23 USC 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 six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (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.

8.14 The LPA shall be responsible for monitoring all DBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the LATP Manual of Procedures.

8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

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

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 U.S. DOT, 49 CFR 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 consultant(s) and/or contractor(s) performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultant(s) and/or contractor(s) shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices, or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.

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

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 neglect or failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 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 the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.

12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

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 ORC 126.30.

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:

Service-Safety Director	District Deputy Director
City of Athens	Ohio Department of Transportation
8 East Washington Street	338 Muskingum Drive
Athens, Ohio 45701	Marietta, Ohio 45750
astone@ci.athens.oh.us	rich.oster@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[1], ***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.

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. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.** [2]

(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.** [3]

(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.** [4]

(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

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2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 %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% 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.

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.

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 subrecipient 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 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 (3) years after FHWA approves the LPA's final Federal voucher for reimbursement of project expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

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

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

15.5 *Ohio Ethics and Conflict of Interest Laws*: LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics and Conflict of Interest laws as provided by ORC 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.

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 ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The STATE does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its contractor(s), subcontractor(s), and any agent of the contractor(s) or its subcontractor(s), 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 ORC 153.02 or 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. 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: CITY OF ATHENS	**STATE OF OHIO** **OHIO DEPARTMENT OF TRANSPORTATION**
By:	By:
Title:	Pamela Boratyn Director
Date:	Date:

0-63-25

Introduced by Micah McCarey, Chair
City & Safety Services Committee

AN ORDINANCE AMENDING THE 2025 APPROPRIATION ORDINANCE; AUTHORIZING THE AUDITOR TO MAKE INTERFUND TRANSFERS; AMENDING ORDINANCE 145-23 THAT AUTHORIZED CONSTRUCTION OF THE NEW FIRE HEADQUARTERS, PROJECT #346; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The 2025 Appropriation Ordinance is hereby amended by appropriating from the unappropriated balance the following sums:

Three Hundred Fifty Thousand Dollars ($350,000.00) to Safety Services Fund, 206, T.C. 500; and

Thirty Thousand Dollars ($30,000.00) to Capital Improvements Fund, 580, T.C. 600, and increasing the total appropriations by said amounts.

SECTION II: The 2025 Appropriation Ordinance 115-24 is further amended by decreasing General Fund, Fire, 101.208, T.C. 200, supplies and services, by Twenty-Seven Thousand Dollars ($27,000.00) and increasing General Fund, Fire, 101.208, T.C. 600, for transfer, by the same amount, and decreasing General Fund 101.120, Other Administrative, T.C. 200, supplies and services, by Twenty-Five Thousand Dollars ($25,000.00), and increasing General Fund 101.120, Other Administrative Services, T.C. 600, for transfer, by the same amount, and increasing and decreasing the total appropriations by said amounts.

SECTION III: The Auditor is hereby authorized to make the following interfund transfers:

FROM	TO	AMOUNT
General Fund, 101.208	Safety Services Fund, 206	$27,000
General Fund, 101.120	Safety Services Fund, 206	$25,000
Capital Improvs.Fund, 580	Safety Services Fund, 206	$530,000

SECTION IV: Section I of Ordinance 145-23, authorized expenditure, is hereby amended to read as follows:

Section III: The Service-Safety Director is hereby authorized to expend up to ~~Thirteen Million Four Hundred Twenty Thousand Dollars ($13,420,000.00)~~ Fourteen Million Three Hundred Fifty-Two Thousand Dollars ($14,352,000.00) as follows:

Three Million Six Hundred Seventy Thousand Dollars ($3,670,000.00) from General Fund, Fire, 101.208, T.C. 500, that includes ($70,000.00) authorized by Ordinance 18-22, for planning/preliminary engineering; and ($600,000.00), authorized by Ordinance 84-22, for design and construction management services;

~~Nine Million Dollars ($9,000,000.00)~~ Nine Million Nine Hundred Thirty-Two Thousand ($9,932,000) from Safety Services Fund, Fire, 206.208, T.C. 500, that includes ($600,000.00) for land purchase and site preparation, authorized by Ordinance 121-22; and

Seven Hundred Fifty Thousand Dollars ($750,000.00) from ARPA Fund, 286, T.C. 500, for said Project #346.

SECTION V: This Ordinance shall be an emergency measure necessary for the preservation of the health, welfare and safety of the residents of the City of Athens, Ohio, in order to maintain fiscal integrity, and it shall be in full force and effect upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

APPROVED:

_____
Clerk of Council

_____
Mayor

0-64-25

Introduced by the Finance & Personnel Committee

AN ORDINANCE AMENDING ORDINANCE 121-24; AUTHORIZING 2025 STAFFING LEVELS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Authorized staffing levels in the Mayor's Office are hereby amended to read as follows:

FUND		DEPARTMENT	POSITION	F.T.E.
101.101	General	Mayor	Executive Assistant (Mayor)	1
101.101	General	Mayor	Human Resources Coordinator	1
101.101	General	Mayor	Executive Assistant (SSD)	1
101.101	General	Mayor	Human Resources Director	1
101.101	General	Mayor	Deputy Service-Safety Dir.	0.7
101.101	General	Mayor	Service-Safety Director	1
101.101	General	Mayor	City Planner	1
101.101	General	Mayor	~~DEIA/Training Coordinator~~ Community Engagement & Accessibility Coordinator	1

SECTION II: This Ordinance shall be in effect and full force upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

APPROVED:

_____
Clerk of Council

_____
Mayor

0-65-25

Introduced by Jeff Risner, Chair
Finance & Personnel Committee

AN ORDINANCE AMENDING ORDINANCE 37-25; THE 2025 APPROPRIATION ORDINANCE 115-24.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Section I of Ordinance 37-25 is hereby amended to read as follows:

Section I: The 2025 Appropriation Ordinance 115-24 is hereby amended by appropriating from the unappropriated balance the following sums:

Eighteen Thousand Three Hundred Ninety-Three and 24/100 Dollars ($18,393.24) to Transportation Assistance Fund, 214.716, T.C. 300, to pay the balance of the City's 2024 local match to HAPCAP; ~~and~~

Three Hundred Forty Thousand Dollars ($340,000.00) to Sanitation Fund, 760.636, T.C. 300, and

Fifteen Thousand Five Hundred Eighty-Eight and 83/100 Dollars ($15,588.83) to Internal Service Fund, 865, T.C. 600, for transfer, and increasing the total appropriations by said amount.

SECTION II: This Ordinance shall be in effect and full force upon passage and approval by the Mayor.

_____
President of Council

ATTEST:

_____
Clerk of Council

APPROVED:

_____
Mayor

0-66-25

Introduced by Alan Swank, Chair
Planning & Development Committee

AN ORDINANCE GRANTING A SPECIAL RIGHT-OF-WAY USE PERMIT AT 75 KIMES LANE TO MAINTAIN EXISTING SIGNAGE IN THE CITY RIGHT-OF-WAY AT US 50 AND NORTH BLACKBURN ROAD.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Having satisfactorily met the regulations established pursuant to Title 49, Management, Administration, and Control of the Use of the City's Public Rights-of-Way, a special right-of-way use permit is hereby granted at 75 Kimes Lane, owner, Richard Buckley, to maintain existing signage at US 50 and North Blackburn Road, as indicated on the application attached hereto and incorporated herein by reference.

SECTION II: Richard Buckley, owner, shall agree to indemnify, and save the City of Athens harmless from all claims, demands, costs, expenses, real estate taxes, if any, and compensation which might arise from the encroachment of permittee upon property of the City of Athens that is the subject of this ordinance.

SECTION III: Said permit shall be subject to the following conditions:

1. This special right-of-way permit is personal in nature and will be in effect for a maximum of seven (7) years from the date of issuance unless revoked by City Council ordinance, or there is a change of ownership or use, whichever comes first.
2. Richard Buckley, owner, shall be responsible for the maintenance and upkeep of said right-of-way.

SECTION IV: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

_____
Clerk of Council

APPROVED:

_____
Mayor

TITLE 49 APPLICATION

Use of the City's Public Rights of Way

In accordance with Title 49, Application Fee: "At the time that a person submits an application for Use of Right of Way Permit, such person shall pay a non-refundable application fee of $50 payable to the City of Athens."

(For Office Use Only)
Permit # T4925-000003
Date Rec'd 5-13-25

Applicant shall comply with all sections of Athens City Code Title 49 Right of Way. All required information shall be attached to application, including such things as but not limited to detailed site plans, a certificate of liability insurance listing City of Athens Ohio as certificate holder. Property owner shall be solely responsible for the maintenance and upkeep of said right-of-way.

Applicant Kimes Convalescent Center, Ltd. Phone 740-593-3357

Mailing Address c/o Mollica Gall Sloan & SIllery Co. LPA, Attn: David J. Mott

Email Address mottd@mgss.com

Address of Project/ Site 75 Kimes Lane, Athens, Ohio 45701

Parcel Number A029190005302 Zoning Designation B-2/Business District

Property Owner Kimes Convalescent Center, Ltd. Phone 740-593-3391

Property Owner Mailing Address 75 Kimes Lane, Athens, Ohio 45701

Project Description Maintain existing signage at US 50 and North Blackburn Road

I HEREBY SWEAR OR AFFIRM THAT ALL THE INFORMATION PROVIDED AND ATTACHED REQUIRED DOCUMENTATION ARE TO THE BEST OF MY KNOWLEDGE TRUTHFUL AND ACCURATE.

By signing this application, the applicant agrees to comply with all facets of Athens City Code Title 49.

Applicant Signature Richard Buckley Owner Date May 6, 2025

By signing property owner agrees to indemnify, and save the City of Athens harmless from all claims, demands, costs, expenses, real estate taxes, if any, and compensation which might arise from the encroachment of permittee upon property of the City of Athens that is the subject of this application.

Property Owner Signature Richard Buckley Date May 6, 2025

For Official Use Only

1. **Code Enforcement Admin:** Signature (CR) Date 5-13-25
   - ☑ Supporting Documents Attached ☑ Fee Paid Amount $ 50.00
2. **Code Directors Review:** ☒ Approved ☐ Refused ☐ Missing Documentation
   - Remarks
   - Signature Date 5-14-25
3. **City Engineer Review:** ☐ Approved ☐ Refused ☐ Missing Documentation
   - Remarks
   - Signature Date
4. **Service Safety Director:** ☑ Approved ☐ Refused ☐ Missing Documentation
   - Remarks
   - Signature Date 5/14/25

Rev. 04/2023

Additional information required by Title 49:

ACC 49.03.02(E)(3) A certificate of insurance where required to be provided to meet the requirements of this chapter;

See attached.

ACC 49.03.02(E)(4) A copy of the applicant's certificate of authority from the PUCO and/or the FCC and/or FERC if the applicant is lawfully required to have or actually does possess such certificate(s) from said commission(s) and any other approvals, permits, or agreements including, but not limited to, any pole attachment and/or conduit use agreements existing between applicant and an owner of said poles and/or conduit;

Not applicable.

ACC 49.03.02(E)(5) Upon request of the city, a detailed description of the applicant's proposed facilities, including, but not limited to, credible information detailing applicant's financial, managerial, and technical ability to fulfill applicant's obligations under this chapter and carry on applicant's proposed activities, and other information as described in this chapter and any rules and regulations.

Application is made for existing directional sign, which predates Title 49, to Kimes Convalescent Center facilities. See attached.

ACC 49.03.02(E)(6) An indication of whether the applicant, or any person controlling the applicant, has been adjudged bankrupt or has been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;

No.

Client#: 46643 KIMESCONV

ACORD™ # CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/26/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
AssuredPartners of Ohio, LLC
1349 W Lane Ave Suite 900
Columbus, OH 43221

CONTACT NAME: Jessica Denney
PHONE (A/C, No, Ext): 614 224-0772 FAX (A/C, No): 614 224-0732
E-MAIL ADDRESS: Jessica.Denney@assuredpartners.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Health Care Industry Liab Recip Ins RRG	11832
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
Kimes Convalescent Center, Ltd
75 Kimes Lane
Athens, OH 45701

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	X		HRGOH010172OC05	04/01/2025	04/01/2026	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
	X Prof Liab $1M/$3M						MED EXP (Any one person)	$5,000
	X Stop Gap $500K/$500K						PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$3,000,000
	POLICY PRO-JECT X LOC						PRODUCTS - COMP/OP AGG	$Included
	OTHER:						Empl Bene	$1,000,000
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N	N/A					E.L. EACH ACCIDENT	$
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is included as Additional Insured on the above policy with respect to the Insured's sign situated on city property.

** Named Insureds **

Kimes Convalescent Center, Ltd, DBA Kimes Nursing & Rehabilitation Center, Hospice of Kimes, LLC, DBA Kimes at Home

CERTIFICATE HOLDER

City of Athens
Office of Code Enforcement
28 Curran Drive
Athens, OH 45701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Chris P. Rinehart

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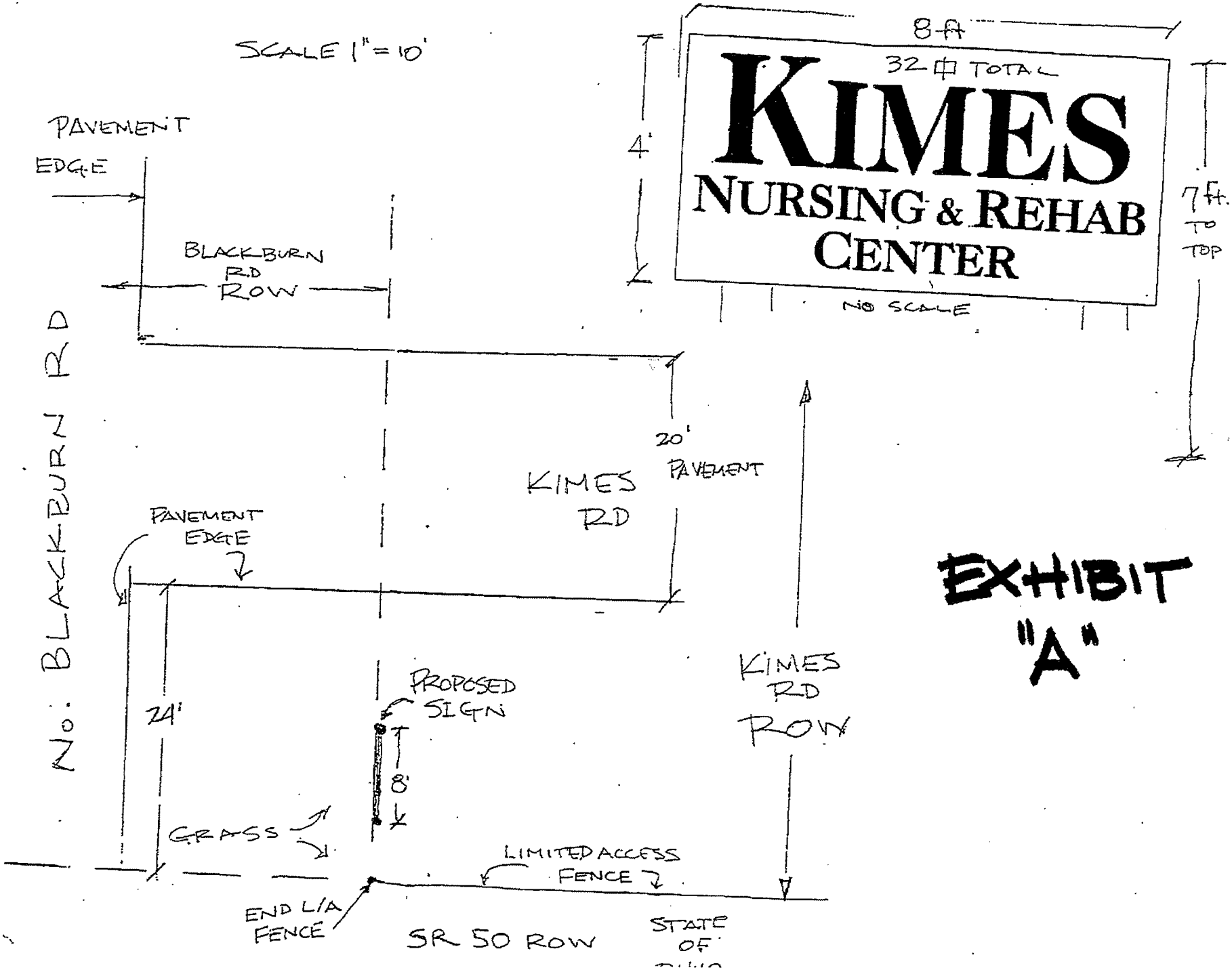

SCALE 1" = 10'
PAVEMENT EDGE
BLACKBURN RD ROW
No. BLACKBURN RD
20' PAVEMENT
KIMES RD
PAVEMENT EDGE
24'
PROPOSED SIGN
8'
GRASS
KIMES RD ROW
LIMITED ACCESS FENCE
END L/A FENCE
SR 50 ROW
STATE OF
8 ft
32 ft TOTAL
4'
KIMES
NURSING & REHAB
CENTER
NO SCALE
7 ft. TO TOP

EXHIBIT "A"

0-67-25

Introduced by Jessica Thomas, Member
City & Safety Services Committee

AN ORDINANCE AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO A GRANT AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE EXTENSION OF KENNY DRIVE AS PART OF THE PUBLIC SAFETY TRAINING FACILITY, PROJECT #373.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The Service-Safety Director is hereby authorized to enter into a grant agreement with the Ohio Department of Transportation for the extension of Kenny Drive as part of the Public Safety Training Facility, Project #373, a copy of said agreement is attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

APPROVED:

_____
Clerk of Council

_____
Mayor

Department of Transportation
transportation.ohio.gov

Mike DeWine, *Governor*
Jim Tressel, *Lt. Governor*
Pamela Boratyn, *Director*

GRANT AGREEMENT

Project Information			
Grantee:	City of Athens	PID:	122954
Project:	ATH Kenny Drive Extension	Agreement No:	42783
Total Eligible Costs:	$1,269,326	Percentage:	16%
Final Reimbursement by:	4/30/2027	Maximum Grant Funds:	$200,000
Scope of Work: Extension of Kenny Drive to Elliotsville Road.			
Grantee Contact			
Name:	Andy Stone	Title:	Service Saftey Director
Address:	8 East Washington Street		
City:	Athens	Zip:	45701
Email:	astone@ci.athens.oh.us	Phone:	740-592-3340
ODOT Contact			
Regional Manager:	Jon Hensler		
Address:	1980 W. Broad Street		
City:	Columbus	Zip:	43223
Email:	Jon.Hensler@dot.ohio.gov	Phone:	614-315-7973

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, ("**Grantor**") hereinafter referred to as ODOT, 1980 W. Broad Street, Columbus, Ohio 43223 and the **Grantee** to set forth the terms and conditions upon which Grantor will provide financial assistance to Grantee and Grantee will use the financial assistance for costs associated with public roadwork improvements for the Scope of Work listed above (hereinafter referred to as the PROJECT).

1. PURPOSE

1.1 Section 5501.03(A)(3) of the Ohio Revised Code (ORC) provides that ODOT may coordinate its activities with those of other appropriate state departments, public agencies, and authorities, and enter into any contracts and agreements with such departments, agencies, and authorities as may be necessary to carry out its duties, powers, and functions.

1.2 ORC § 5501.11(A)(4) states the department of transportation with respect to highways shall cooperate with the counties, municipal corporations, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance, repair, and improvement of the public roads and bridges.

1.3 The GRANTEE will complete the PROJECT.

1.4 The purpose of this Agreement is to set forth the responsibilities of the parties associated with the Jobs & Commerce Economic Development Program ("JCED") funding (SAC 4JC7) that is being made available for the PROJECT by ODOT.

1.5 The GRANTEE shall comply with all applicable Federal and State laws, regulations, and applicable executive orders in regards to the PROJECT. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

2. FUNDING AND PAYMENT

2.1 The total eligible costs for the PROJECT is estimated as listed above. Funds provided through ODOT shall be applied only to the eligible costs associated with the advancement of the PROJECT.

2.2 ODOT shall provide to the GRANTEE the percent of the eligible costs, up to a maximum as set forth on page one of this Agreement. The GRANTEE shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and GRANTEE claims.

2.3 All funding from ODOT under this Agreement operates on a reimbursement basis. The GRANTEE shall review and approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.

2.4 The GRANTEE shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The GRANTEE must submit to ODOT a written request for reimbursement of the state share of the expenses involved, attaching copies of all source documentation associated with invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed daily as the items of work are completed and accepted.

2.5 The GRANTEE may submit a maximum of two requests for reimbursement. The deadline for the final reimbursement request is as set forth on page one of this Agreement. The GRANTEE may ask for one extension of up to one year of this agreement if adequate funds have been appropriated.

2.6 Reimbursement to the GRANTEE shall be submitted to the Grantee Contact and address as set forth on page one of this Agreement.

2.7 Jobs & Commerce Economic Development Program funds are specifically used for the improvement or construction of publicly owned roadways that support: job creation or job retention and private sector investment. In the event any of these criteria are compromised or all together cancelled, ODOT reserves the right to terminate any or all of this agreement.

3. PROJECT DEVELOPMENT AND DESIGN

3.1 The GRANTEE is administering this PROJECT and is responsible for all aspects of the project, including but not limited to: environmental responsibilities, permit requirements, right of way or utility reimbursement, and construction contract administration.

3.2 Any right, claim, interest, and/or right of action, whether contingent or vested, of the GRANTEE, arising out of or related to any contract entered into by the GRANTEE for the work to be performed by the GRANTEE on this PROJECT is the responsibility of the GRANTEE. ODOT expressly rejects any liability for the PROJECT and any claims arising from the PROJECT.

4. CERTIFICATION AND RECAPTURE OF FUNDS

4.1 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 Ohio Revised Code 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.

4.2 If for any reason the PROJECT is found to not be in compliance with all applicable local, state, or federal rules and processes the GRANTEE shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT.

5. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

5.1 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 Revised Code.

5.2 The GRANTEE 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 GRANTEE's obligations made or agreed to herein.

6. NOTICE

6.1 Notice under this Agreement shall be directed as follows:

If to the GRANTEE:

To the Grantee Contact and address as set forth on page one of this Agreement.

If to ODOT:

To the ODOT Contact and address as set forth on page one of this Agreement.

7. FEDERAL REQUIREMENTS

During the performance of this Agreement, the GRANTEE, for itself, its assignees, and successors in interest agrees as follows:

7.1 The GRANTEE will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future). Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

7.2 The GRANTEE agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The GRANTEE will, in all solicitations or advertisements for employees placed by or on behalf of the GRANTEE, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future).

7.3 Compliance with Regulations: The GRANTEE (hereinafter includes consultants) will comply with the Acts and Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

7.4 Nondiscrimination: The GRANTEE, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, low-income status in the selection and retention of the GRANTEE, including procurements of materials and leases of equipment. The GRANTEE will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix C, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

7.5 Solicitations for the GRANTEE, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the GRANTEE for work to be performed under a subcontract,

including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by the GRANTEE of the GRANTEE's obligations under this contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, or low-income status.

7.6 Information and Reports: The GRANTEE will provide all information and reports required by the Acts, the Regulations, and 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 ODOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the GRANTEE will so certify to ODOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

7.7 Sanctions for Noncompliance: In the event of the GRANTEE's noncompliance with the nondiscrimination provisions of this Agreement, ODOT will impose such sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

a) Withholding of payments to the GRANTEE under the Agreement until the GRANTEE complies, and/or
b) Cancellation, termination or suspension of the Agreement, in whole or in part.

7.8 Incorporation of Provisions: The GRANTEE will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The GRANTEE will take action with respect to any subcontract or procurement as ODOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the GRANTEE becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, the GRANTEE may request ODOT to enter into any litigation to protect the interests of ODOT. In addition, the GRANTEE may request the United States to enter into the litigation to protect the interests of the United States.

7.9 During the performance of this Agreement, the GRANTEE, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects)
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex)
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex)
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and COUNTY (or other)s, whether such programs or activities are Federally funded or not)
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the

basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)

- The Federal Aviation Administration's Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex)
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (prohibits discrimination in the sale, rental, and financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status (presence of child under the age of 18 and pregnant women)
- Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 et seq.) (prohibits discrimination on the basis of sex in education programs or activities)
- Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335) (prohibits discrimination on the basis of present, past or future military service)
- Genetic Information Nondiscrimination Act (GINA) (29 CFR Part 1635, 42 U.S.C. 2000ff)

8. ETHICS AND CONFLICT OF INTEREST

8.1 The GRANTEE agrees that they have reviewed and will comply with the Ethics and Conflict of Interest laws including 23 CFR 1.33, 23 CFR 636.116 and Ohio Revised Code sections 102.03, 2921.42 and 2921.43.

9. GENERAL PROVISIONS

9.1 *Record Retention*: The GRANTEE 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 books, documents, and records relating to the GRANTEE's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years. 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.

9.2 *Ohio Ethics Laws*: The GRANTEE 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 Ohio Revised Code.

9.3 *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 GRANTEE (or other) 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.

9.4 *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.

9.5 *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.

9.6 *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.

9.7 *Term of Agreement:* This Agreement shall be in effect from the last day executed by the parties through the date which is three (3) years after the Project Completion Date. The GRANTEE acknowledges that the Term extends beyond the Project Completion Date for purposes of reporting by the GRANTEE and monitoring by Grantor of the results of the award of Grant Funds.

9.8 *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. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. 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 of 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.

GRANTEE
as set forth on page one of this Agreement
OR AUTHORIZED REPRESENTATIVE

Signature: _____

Title: _____

STATE OF OHIO
OHIO DEPARTMENT OF TRANSPORTATION

By: _____
Pamela Boratyn, Director

0-68-25

Introduced by Jessica Thomas, Member
City & Safety Services Committee

AN ORDINANCE AMENDING ORDINANCE 108-24; AUTHORIZING DESIGN AND CONSTRUCTION OF A PUBLIC SAFETY TRAINING FACILITY, PROJECT #373.

WHEREAS, in addition to the Public Safety Training Center, this project will allow for decreased EMS response time to southern Athens, increased water capacity for fire protection to Elliotsville Road, Kenny Drive, and Turtle Run, and increased access to the Kenny Drive Industrial Subdivision and area businesses, and

WHEREAS, the project will provide storage buildings and a fenced laydown yard for the Engineering & Public Works and Police Departments, which will in turn allow for the retirement of storage space on West State Street (colloquially known as "the bottom") in order to construct a new transit maintenance facility for Athens Transit, and to retire the Hudson Street storage building and yard for other uses, such as housing; and

WHEREAS, the City received 2024 State Capital Bill funding in the amount of $2.5 million; and has been awarded ODOT Office of Jobs and Commerce Funding of $200,000 to be reimbursed to the Street Fund upon completion of the project;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The 2025 Appropriation Ordinance, 115-24, is hereby amended by appropriating from the unappropriated balance the following sums:

Eight Hundred Thousand Dollars ($800,000.00) to Street Fund, 220, T.C. 500;

Six Hundred Thousand Dollars ($600,000.00) to Water Fund, 740, T.C. 500; for said Public Safety Training Facility;

Four Hundred Thousand Dollars ($400,000.00) to Sewer Fund, 750, T.C. 500; and

Three Hundred Eighty-One Thousand Dollars ($381,000.00) to Storm Sewer Fund, 755.635, T.C. 500, and increasing the total appropriations by said amounts.

SECTION II: Section II of Ordinance 108-24 is hereby amended to read as follows:

Section II: The Service Safety Director is hereby authorized to expend up to ~~Two Million Nine Hundred Thousand Dollars ($2,900,000.00)~~ Five Million Eighty-One Thousand Dollars ($5,081,000.00) as follows:

Two Million Five Hundred Thousand Dollars ($2,500,000.00) from Safety Services Fund, 206, T.C. 500;

~~Two Hundred Thousand Dollars ($200,000.00)~~ One Million Dollars ($1,000,000.00) from Street Fund, 220, T.C. 500;

~~Two Hundred Thousand Dollars ($200,000.00)~~ Eight Hundred Thousand Dollars ($800,000.00) from Water Fund, 740, T.C. 500;

Four Hundred Thousand Dollars ($400,000.00) from Sewer Fund, 750, T.C. 500; and

Three Hundred Eighty-One Thousand Dollars ($381,000.00) from Storm Sewer Fund, 755.635, T.C. 500; for Project #373.

SECTION III: This Ordinance shall be in effect and full force upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

APPROVED:

_____
Clerk of Council

_____
Mayor

0-69-25

Introduced by Solveig Spjeldnes, Chair
Transportation Committee

AN ORDINANCE AFFIRMING AN EASEMENT FROM THE STATE OF OHIO AS GRANTOR TO THE CITY OF ATHENS, GRANTEE, NECESSARY FOR THE CONSTRUCTION OF THE STATE ROUTE 682/56 ROUNDABOUT, PROJECT #357.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Athens City Council does hereby affirm an easement from the State of Ohio as grantor to the City of Athens, grantee, necessary to permit the installation, construction, reconstruction, use, operation, maintenance, repair, replacement, removal, servicing and improvement of a certain roundabout upon the Easement Area, a copy of which is attached and incorporated herein by reference.

SECTION II: This Ordinance shall be in effect and full force upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

_____
Clerk of Council

APPROVED:

_____
Mayor

TRANSFER NOT NECESSARY

MAY 19 2025

Jill Davidson
Athens County Auditor

File No. 9019
DMH

STATE OF OHIO EASEMENT

This Agreement (hereinafter referred to as "Agreement"), dated as of April 9, 2025, is made and entered into by and between the State of Ohio, acting by and through the Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43228-1395, the Grantor (hereinafter referred to as "State"), for and on behalf of the Department of Mental Health and Addiction Services (hereinafter referred to as "Agency"), and City of Athens, a body politic, duly formed and existing under the laws of the State of Ohio (hereinafter referred to as "Grantee"), having its principal place of business located at 8 East Washington Street, Ste. 301, Athens, Ohio 45701, pursuant to the provisions of Section 123.01(A)(5) of the Ohio Revised Code.

RECITALS

WHEREAS, State is the owner, in fee simple, of the land described in Exhibit "A" attached hereto and made a part hereof and more particularly depicted in Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as "Easement Area"). Further reference is made to DAS File No. 9019 on file with the State; and

WHEREAS, Grantee desires to obtain from State an easement in order to permit the installation, construction, reconstruction, use, operation, maintenance, repair, replacement, removal, servicing and improvement of a certain roundabout upon the Easement Area; and

WHEREAS, Agency requested the State prepare this Agreement; and

NOW, THEREFORE, in consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. **USE OF PREMISES**.

State does hereby grant a non-exclusive easement unto Grantee to be used solely to install, construct, reconstruct, use, operate, maintain, repair, replace, remove, service and improve in, on, over, under, across, through and upon the Easement Area a roundabout (hereinafter referred to as "Improvement"). On or before the Expiration Date (as defined below) or earlier if this Agreement is terminated pursuant to the provisions hereof, Grantee shall remove, or cause the removal of, all component parts of the Improvement and restore the ground to its original condition at its own cost and expense, unless the parties agree otherwise in writing.

II. **TERM**.

The term of this Agreement shall be for fifteen (15) years, commencing on May 1, 2025 (hereinafter referred to as "Commencement Date"), and expiring on April 30, 2040 (hereinafter referred to as "Expiration Date"), unless earlier terminated pursuant to a subsequent agreement between the parties or in accordance with the provisions of Paragraph X hereof.

202500002030
FILED FOR RECORD IN
ATHENS COUNTY, OHIO
JESSICA MARKINS, RECORDER
05/19/2025 01:42:52 PM
OR BOOK: 624 PAGE: 1337
EASEMENT 114.00 PG: 12

202500002030
ATHENS CITY MAYORS OFFICE

TX:401951
DOCID:8026988

III. CONSIDERATION.

Grantee shall pay to Agency the total sum of One and 00/100 Dollars ($1.00) in consideration of State's granting an easement. Grantee shall tender such payment payable to the "Treasurer, State of Ohio" to Agency upon delivery to Grantee of a fully executed counterpart of this Agreement.

IV. CONSTRUCTION/MAINTENANCE.

(A) Grantee agrees that the Improvement shall be installed, constructed, reconstructed, used, operated, maintained, repaired, replaced, removed, serviced and improved at all times in accordance with all local, state or federal laws, rules and regulations and applicable industry guidelines, including compliance with all applicable Equal Employment Opportunity laws. If no such laws, rules, regulations or industry guidelines are applicable to the Improvement, then responsible engineering practices shall be the control.

(B) If the surface of the ground in the Easement Area is disturbed at any time, Grantee shall provide necessary fill, re-sod or re-seed any grassed areas, and make such repairs and replacements for a period of not less than two (2) years after the date of such disturbance as may be needed to restore the ground to its former condition or pay State for all damages caused thereto.

(C) Grantee shall notify State immediately when any installation belonging to a party other than Grantee, or any unusual condition, is encountered in the Easement Area.

(D) Grantee shall prior to the commencement of any work permitted hereunder obtain and thereafter maintain, at its sole cost and expense, all licenses, permits, etc. required by law with respect to said work or the Improvement.

(E) State or Agency may locate, relocate, install, construct, reconstruct, maintain, operate, repair, remove, use and place property improvements in, on, over, under, across, through and upon the Easement Area, so long as State's or Agency's improvements do not unreasonably impair the strength of or unreasonably interfere with Grantee's ability to use the Easement Area and maintain its Improvement.

(F) Grantee shall comply with the provisions of Chapter 4115 of the Ohio Revised Code, Prevailing Wage Requirements, as applicable.

(G) Grantee shall maintain and repair its Improvement at its own cost and expense on a continuous and ongoing basis for the term of this Agreement. Any maintenance and repairs shall be performed in a good and workmanlike manner.

V. LIABILITY.

Grantee shall indemnify and hold State harmless, so far as permitted by Ohio law, from any claims, demands, causes, actions and damages arising out of any act, omission or neglect by Grantee or any of its successors, assigns, agents, servants, employees, contractors, subcontractors and invitees ensuing from or in connection with Grantee's occupation and use of the Easement Area and

operation or maintenance of the Improvement. Nothing contained herein shall be deemed to be a waiver by State of any legal or factual defenses, which State may enjoy.

The provisions of this Paragraph V shall survive the expiration or termination of the term of this Agreement.

VI. INSURANCE.

At all times during the term of this Agreement, Grantee shall maintain adequate reserves and funding to compensate for bodily injury, personal injury, wrongful death and property damage or other claims including defense costs and other loss adjustment expenses arising out of or related to the Easement Area. At State's request, Grantee shall provide written proof to assure that the appropriate levels of financial responsibility are being retained. Failure to comply with this clause shall constitute a default of this Agreement.

VII. MECHANIC'S LIENS.

(A) Nothing contained in this Agreement shall be construed as constituting State's consent, express or implied, to or for the performance of any labor or services or furnishing of any materials for the installation, construction, reconstruction, usage, operation, maintenance, repair, replacement or improvement of the Easement Area or any portion thereof or the Improvement or any portion thereof.

(B) Grantee shall not allow any liens or encumbrances to be filed against the Easement Area, or any portion thereof, other than (i) liens created by or resulting from any act or status of State or failure by State to perform any obligation not required to be performed by Grantee hereunder, or (ii) liens created by or resulting from any act or status or failure to act by Grantee to which State shall have expressly consented in writing. If such a lien or encumbrance is placed of record against the Easement Area, or any portion thereof, Grantee shall, within thirty (30) days after receiving notice thereof, remove or discharge same or bond off such lien or encumbrance.

VIII. TAXES/ASSESSMENTS.

If as a result of this Agreement any taxes and/or assessments, whether general or special, ordinary or extraordinary, unforeseen or foreseen, of any kind or nature whatsoever, shall be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on the Easement Area and/or the Improvement, Grantee shall be fully responsible for and shall pay same before any fine, penalty, interest or costs may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof.

IX. ASSIGNMENT.

Grantee may not assign or transfer this Agreement, in whole or in part, without the prior written consent of the State, whose consent may be withheld for any reason. Should consent to any such assignment be approved, Grantee shall notify the Agency. Any approved assignment or transfer shall not relieve Grantee of its obligations and duties under the terms, covenants and conditions of this Agreement. Grantee shall cause any assignee or transferee to expressly assume, and by reason

of such assignment or transfer shall be deemed as having assumed, all of the obligations and duties of Grantee hereunder.

X. TERMINATION.

This Agreement may be terminated by State upon ninety (90) days' notice given to Grantee if the Easement Area, or any portion thereof, is needed by State for any public or quasi-public use or purpose. On or before the date stated in such notice of termination, Grantee shall remove, or cause the removal of all component parts of the Improvement and restore the Easement Area to its original condition, at its own cost and expense, if State so requests. Grantee shall have no claim against State for the value of any unexpired portion of the original term of this Agreement or for the Improvement. Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.

This Agreement may be terminated at any time by Grantee by delivering written notice to State and Agency setting forth the date Grantee intends to terminate. Upon either the voluntary termination of this Agreement, or the end of the term hereof, Grantee shall remove all of the Improvement prior to termination, at its own cost and expense, if State so requests, and shall restore the Easement Area to its original condition, unless otherwise agreed to in writing by State and Agency. Grantee's obligations hereunder shall continue until such time as the Improvement is fully removed and the Easement Area fully restored as required herein, notwithstanding the stated date of termination in the notice provided by Grantee, or in the Agreement. Failure to remove the Improvement shall not be considered an extension of the term of the Agreement. No portion of any consideration paid pursuant to the terms of the Agreement will be refunded to Grantee.

XI. DEFAULT.

(A) State may find Grantee in default of this Agreement when any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided: (i) Grantee's failure to make any payment required to be paid by Grantee when the same shall become due and payable or (ii) Grantee's failure to perform or observe any other covenant, term, or condition herein contained on Grantee's part to be performed or observed.

(B) If the State finds Grantee to be in default under Paragraph XI(A), Grantee must cure such default within fifteen (15) days after the giving of notice to Grantee by State of such failure. If Grantee proceeds to promptly and continuously cure the same default with due diligence, then upon receipt by State of notice from Grantee stating the reason that such default cannot be cured within fifteen (15) days and stating that Grantee is proceeding with due diligence to cure such default, the State may extend such time within which such default may be cured for such period as may be necessary to complete the curing of same with due diligence.

(C) If Grantee fails to cure such default, then State may give to Grantee, at State's option, a notice of election to terminate this Agreement upon the date specified in such notice, which date shall not be less than ten (10) days after the date of such notice, and upon the date specified in such notice the term of this Agreement shall expire and terminate as fully and completely and with the same effect as if such date were the Expiration Date, and all rights of Grantee shall thereupon expire and terminate, and Grantee shall remove or cause the

removal of the Improvements and restore the Easement Area to its original condition at its own cost and expense, if State so requests.

(D) Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.

(E) Upon the termination of this Agreement by reason of the happening of any event of default specified in this Paragraph XI, or in any other manner or circumstances whatsoever pursuant to legal process, by reason of or based upon or arising out of the occurrence of any such event of default under this Agreement, Grantee shall pay to Agency all sums required to be paid by Grantee up to the time of such termination.

XII. RECORDATION.

At its expense and within thirty (30) days of its receipt, Grantee shall present for recording a fully executed Agreement in accordance with Chapter 5301 of the Ohio Revised Code in the office of the County where the Easement Area is located. Grantee shall do likewise with respect to any addendum to this Agreement which may be entered into hereafter by the parties. As proof of recording, Grantee shall promptly return a copy of the recorded Agreement to the State.

XIII. RIGHTS CUMULATIVE.

All rights and remedies of State enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised or enforced concurrently and all obligations, rights or remedies shall survive formal termination of this Agreement.

XIV. WAIVER.

The waiver by State of, or the failure of State to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition herein contained. The subsequent acceptance of any payment hereunder by State shall not be deemed to be a waiver of any preceding breach by Grantee of any term, covenant or condition of this Agreement.

XV. NOTICES, DEMANDS OR INSTRUMENTS.

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid,

(a) with respect to State, addressed to:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning

4200 Surface Road
Columbus, Ohio 43228-1395
Attention: Administrator

(b) with respect to Agency, addressed to:
Ohio Department of Mental Health & Addiction Services
30 East Broad Street, 11th Floor
Columbus, Ohio 43215
Attention: Chief, Office of Capital Development and Operations Management
and,

(c) with respect to Grantee, addressed to:
City of Athens
8 East Washington Street, Ste 301
Athens, Ohio 45701
Attention: Service Safety Director

Each party shall have the right from time-to-time to specify as its address for purposes of this Agreement any other address in the United States of America upon giving not less than fifteen (15) days' notice thereof, similarly given, as provided for in this paragraph.

XVI. MODIFICATIONS.

This Agreement may not be changed, modified or discharged except by a writing signed by duly authorized representatives of both State and Grantee.

XVII. GOVERNING LAW.

This Agreement shall be governed by and interpreted under the laws of the State of Ohio. Any action or proceeding arising out of the terms of this Agreement shall be brought only in a court of competent jurisdiction located in Franklin County, Ohio.

XVIII. HEADINGS.

The headings to the various paragraphs and exhibits to this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

XIX. CAMPAIGN CONTRIBUTIONS & ETHICS COMPLIANCE.

Grantee hereby certifies that neither Grantee nor any of Grantee's partners, officers, directors, shareholders, nor the spouse of any such person have made contributions in excess of the limitations specified in Section 3517.13 of the Ohio Revised Code.

Grantee, by signature on this document, certifies that it has reviewed and understands the Ohio ethics and conflict of interest laws, is currently in compliance and will continue to adhere to the requirements of such laws and will take no action inconsistent with those laws.

XX. INDEPENDENT CONTRACTOR STATUS.

It is fully understood and agreed that Grantee is an independent contractor and neither Grantee nor its personnel shall at any time, or for any purpose, be considered agents, servants, or employees of the Agency, or the State of Ohio, or public employees for the purpose of Ohio Public Employees Retirement Systems benefits.

Intentionally Left Blank

The terms of the within State of Ohio Easement are accepted and agreed to by the Ohio Department of Mental Health & Addiction Services.

By: _____ Date: 5/7/2025
LeeAnne Cornyn, Director

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed and delivered this Agreement as of the date first set forth above.

GRANTOR
The STATE OF OHIO

By: Kathleen Madden
Director of Administrative Services or
Signatory Designee
Statutory Agent, RC 123.01(A)(5)

ACKNOWLEDGMENT

State of Ohio, Franklin County, ss:

On this 9th. day of April, 2025, before me personally appeared Kathleen C. Madden who acknowledged that the foregoing document is being executed for and on behalf of the Department of Administrative Services, acting on behalf of the State of Ohio, that the same is his/her own and the Department of Administrative Services' free and voluntary act and deed and that he/she is duly authorized to enter into said document for and on behalf of the Department of Administrative Services.

Molly Elkins
Notary Public, State of Ohio
My Commission Expires: 10/4/27

Molly Elkins
Notary Public, State of Ohio
My Commission Expires 10-04-27

File No. 9019
DMH

GRANTEE
City of Athens

By: _____
Andy Stone

Title: Service Safety Director

ACKNOWLEDGMENT

State of Ohio, Athens County, ss:

On this 31 day of March, 2025, the foregoing instrument was acknowledged before me by Andy Stone, Service Safety Director of City of Athens, a body politic. Andy Stone acknowledges that he executed the foregoing instrument, that the same is his free and voluntary act and deed, and that he is duly authorized to enter into this instrument for and on behalf of the City of Athens.

NOTARY PUBLIC STATE OF OHIO

TONYA L BAKER
Notary Public
State of Ohio
My Comm. Expires
January 8, 2027

_____
Notary Public, State of Ohio
My Commission Expires January 8, 2027

APPROVED AS TO FORM
City of Athens, Ohio
Department of Law

By: _____
Lisa Eliason, City Law Director

This State of Ohio Easement prepared by:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning
4200 Surface Road
Columbus, Ohio 43228-1395
Phone No. (614) 387-6049

EXHIBIT A
4.591 Acre Survey

Situate in the State of Ohio, Athens County, Athens Township, Auditor's Section 22, Farm Lot 96, Township 9 North, Range 14 West, Ohio Company Purchase, City of Athens and being part of a parcel conveyed to the State of Ohio recorded in Deed Book 93, Page 331 of the Athens County Recorder's office and being more particularly described as follows:

Commencing at a 1 inch iron pipe found at the northeast corner of Farm Lot 98 also being the southeast corner of Farm Lot 96 per an EMH&T survey by Gregory K. Wright, thence along a random line **N11°27'13"W** a distance of **1693.51** to a mag nail set on the south line of Farm Lot 96 being a point in the centerline of State Route 682 (ODOT R/W plans ATH 682-2.08-2.39), the center of Margaret Creek and the northeast corner of a 16.535 acre parcel conveyed to the Ohio Department of Transportation recorded in Official Record 566, Page 1683 at centerline station 7+85.48, said mag nail set being the **Point of Beginning** for the parcel herein described;

Thence from the **Point of Beginning** along the center of Margaret Creek being the north line of Farm Lot 96 **N49°47'54"E** a distance of **55.30 feet** to the southwest corner of a 2.490 acre parcel conveyed to East State Street Development recorded in Official Record 526, Page 958;

Thence along the south line of East State Street Development being the center of Margaret Creek and the north line of Farm Lot 96 the following six courses;

1. **N49°47'54"E** a distance of **48.08 feet** to a point;
2. **N53°15'13"E** a distance of **242.24 feet** to a point;
3. **N61°27'34"E** a distance of **116.99 feet** to a point;
4. **N72°15'03"E** a distance of **34.85 feet** to a point;
5. **N84°54'13"E** a distance of **58.56 feet** to a point;
6. **N88°39'16"E** a distance of **112.32 feet** to the center of the Hocking River being the east line of Farm Lot 96;

Thence along the center of the Hocking River being the east line of Farm Lot 96 the following five courses;

1. **S21°16'10"W** a distance of **79.79 feet** to a point;
2. **S06°36'24"W** a distance of **164.59 feet** to a point;
3. **S01°30'31"W** a distance of **79.48 feet** to a point;

4. **S22°59'54"E** a distance of **68.01 feet** to a point;

5. **S21°16'17"E** a distance of **40.22 feet** to a magnail set in the centerline of West Union Street at centerline station 632+78.84 (ODOT R/W plans ATH-56-11.55-11.96 now West Union Street);

Thence along the centerline of West Union Street along a curve to the left, 308.95 feet, having a radius of 1432.55 feet, a delta of 12°21'25", a chord of **S56°26'41"W** a distance of **308.36 feet** to the intersection of West Union Street, State Route 56 and State Route 682 at centerline station 629+69.88 being centerline station 3+50.04;

Thence **N46°07'18"W** a distance of **435.44 feet** along the centerline of State Route 682 to the **Point of Beginning.**

The above described contains 4.591 acres more or less including the present road which occupies 0.982 acres. There is no Auditor's Parcel Number, acreage or owner on the current tax maps.

Subject to all legal easements and rights of way.

All iron pins set are 3/4 inch diameter x 30 inch long rebar with a plastic cap stamped "Canter S-7226".

All stations and offsets are referenced to the existing centerline of right of way of State Route 682 (ODOT R/W plans ATH 682-2.08-2.39) and West Union Street (ODOT R/W plans ATH-56-11.55-11.96 now West Union Street). Said right of way plans are located at ODOT District 10 office, 338 Muskingum Drive, Marietta Ohio.

This description was prepared under the direction of Robert C. Canter, Registered Surveyor No. 7226 and is based on a field survey by Buckley Group, LLC., completed April 2024.

Prior Instrument Reference as of this writing is in Deed Book 93, Page 331 of the Athens County Recorder's Office.

All bearings, coordinates and distances are based on grid north of the O.D.O.T. Low Distortion Projection-Athens County. Reference the centerline of State Route 682 being **N46°07'18"W.**

Robert C. Canter, P.S. 7226
Buckley Group, LLC.

STATE OF OHIO
ROBERT CANTER
S-7226
REGISTERED
PROFESSIONAL SURVEYOR

5-1-24
Date

Description Checked for
Mathematical Accuracy
Athens County
ENGINEER'S OFFICE
BY: _____
DATE: 5/1/24

File No. 9019
DMH

EXHIBIT "B"
SURVEY OF EASEMENT AREA

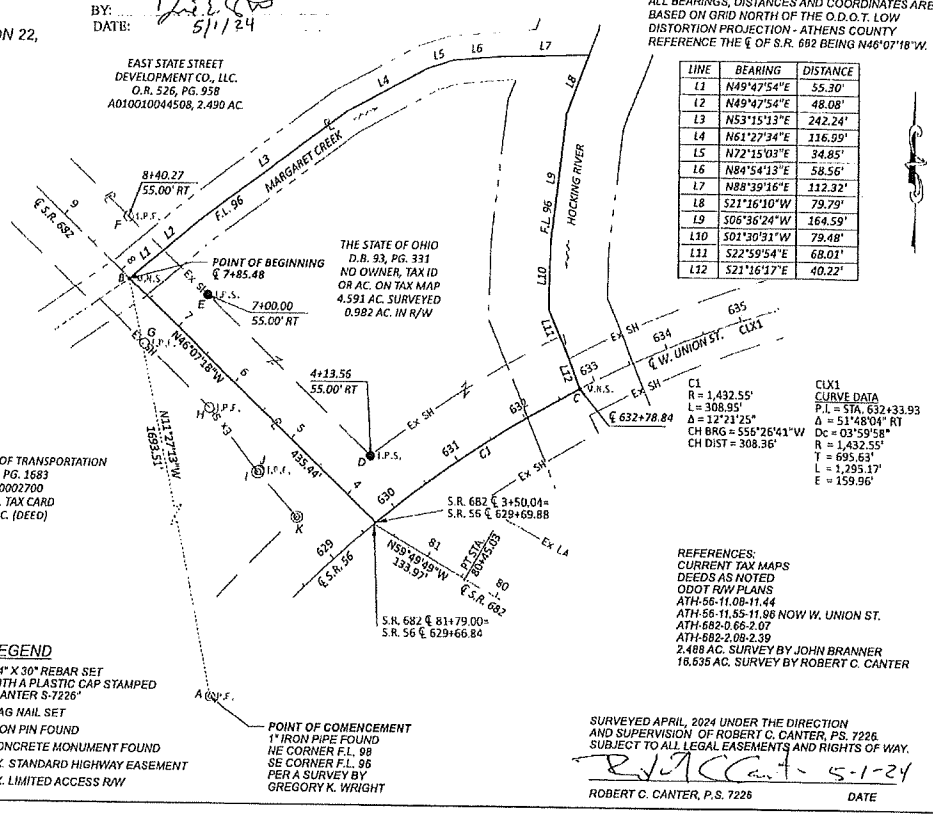
Description Checked for Mathematical Accuracy
Athens County
ENGINEER'S OFFICE
BY:
DATE: 5/1/24

BOUNDARY SURVEY FOR THE STATE OF OHIO STATE OF OHIO, ATHENS COUNTY, ATHENS TOWNSHIP, AUDITOR'S SECTION 22, FARM LOT 96, T9N, R14W, OHIO COMPANY PURCHASE CITY OF ATHENS

BASIS OF BEARINGS:
ALL BEARINGS, DISTANCES AND COORDINATES ARE BASED ON GRID NORTH OF THE O.D.O.T. LOW DISTORTION PROJECTION - ATHENS COUNTY REFERENCE THE ℄ OF S.R. 682 BEING N46°07'18"W.

POINT	NORTHING	EASTING	DESCRIPTION
A	319491.370	156245.086	1" IRON PIPE FOUND
B	321151.156	155908.795	MAG NAIL SET
C	321019.784	156479.632	MAG NAIL SET
D	320933.016	156214.997	IRON PIN SET
E	321131.555	156008.528	IRON PIN SET
F	321228.783	155907.423	IRON PIN FOUND-NO CAP
G	321070.294	155927.930	IRON PIN FOUND, ODOT CAP
H	320990.538	156010.819	IRON PIN FOUND, ODOT CAP
I	320910.363	156072.653	CONC. MON., WITH X
J	320912.985	156074.909	IRON PIN FOUND, ODOT CAP
K	320855.149	156122.678	CONC. MON., NO TOP

LINE	BEARING	DISTANCE
L1	N49°47'54"E	55.30'
L2	N49°47'54"E	48.08'
L3	N53°15'13"E	242.24'
L4	N61°27'34"E	116.99'
L5	N72°15'03"E	34.85'
L6	N84°54'13"E	58.56'
L7	N88°39'16"E	112.32'
L8	S21°16'10"W	79.79'
L9	S06°36'24"W	164.59'
L10	S01°30'31"W	79.48'
L11	S22°59'54"E	68.01'
L12	S21°16'17"E	40.22'



C1
R = 1,432.55'
L = 308.95'
Δ = 12°21'25"
CH BRG = S56°26'41"W
CH DIST = 308.36'

CLX1
CURVE DATA
P.I. = STA. 632+33.93
Δ = 51°48'04" RT
Dc = 03°59'58"
R = 1,432.55'
T = 695.63'
L = 1,295.17'
E = 159.96'

STATE OF OHIO
ROBERT CANTER S-7226
REGISTERED PROFESSIONAL SURVEYOR

1"=100'

PLAT OF SURVEY	
SURVEY FOR: STATE OF OHIO DEPARTMENT OF TRANSPORTATION	
JOB #232109	DATE: 04/10/2024
DRWN: HTM	CHK: RCC
buckleygroup	6801 SR 55 ATHENS, OH 45701 (740)592-5706 www.buckleygroup.com

LEGEND

- ● I.P.S. 3/4" X 30" REBAR SET WITH A PLASTIC CAP STAMPED "CANTER S-7226"
- • M.N.S. MAG NAIL SET
- ○ I.P.F. IRON PIN FOUND
- ◎ CONCRETE MONUMENT FOUND
- Ex SH —— EX. STANDARD HIGHWAY EASEMENT
- Ex LA —— EX. LIMITED ACCESS R/W

REFERENCES:
CURRENT TAX MAPS
DEEDS AS NOTED
ODOT R/W PLANS
ATH-56-11.08-11.44
ATH-56-11.55-11.96 NOW W. UNION ST.
ATH-682-0.66-2.07
ATH-682-2.08-2.39
2.488 AC. SURVEY BY JOHN BRANNER
16.535 AC. SURVEY BY ROBERT C. CANTER

SURVEYED APRIL, 2024 UNDER THE DIRECTION AND SUPERVISION OF ROBERT C. CANTER, PS. 7226. SUBJECT TO ALL LEGAL EASEMENTS AND RIGHTS OF WAY.

ROBERT C. CANTER, P.S. 7226 — DATE 5-1-24

Page 12 of 12

0-70-25

Introduced by Solveig Spjeldnes, Chair
Transportation Committee

AN ORDINANCE AUTHORIZING THE MAYOR TO SUBMIT AN APPLICATION TO PARTICIPATE IN THE STATE CAPITAL IMPROVEMENT AND/OR LOCAL TRANSPORTATION IMPROVEMENT PROGRAM(S) FOR ISSUE I FUNDS; AND TO EXECUTE CONTRACTS AS REQUIRED.

WHEREAS, the State Capital Improvement Program and Local Transportation Improvement Program both provide financial assistance to political subdivisions for capital improvements to public infrastructure;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The Mayor is hereby authorized to submit an application to the Ohio Public Works Commission (OPWC), to participate in the State Capital Improvement and/or Local Transportation Improvement Program(s) for Issue I Funds for Fiscal Year ’26, Round 38.

SECTION II: The Mayor is further authorized to enter into any agreements as may be necessary and appropriate for obtaining this financial assistance.

SECTION III: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

_____
Clerk of Council

APPROVED:

_____
Mayor

0-71-25

Introduced by Alan Swank, Chair
Planning & Development Committee

AN ORDINANCE GRANTING A SPECIAL RIGHT-OF-WAY USE PERMIT AT 107 AND 107 1/2 EAST STATE STREET TO ALLOW CONTINUED USE FOR RESIDENTIAL PARKING ON AN UNUSED CITY ALLEYWAY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Having satisfactorily met the regulations established pursuant to Title 49, Management, Administration, and Control of the Use of the City's Public Rights-of-Way, a special right-of-way use permit is hereby granted at 107 and 107 ½ East State Street, owner, SixtyFive Investments, LLC, to allow continued use for residential parking on an unused City alleyway, as indicated on the application attached hereto and incorporated herein by reference.

SECTION II: SixtyFive Investments, LLC, owner, shall agree to indemnify, and save the City of Athens harmless from all claims, demands, costs, expenses, real estate taxes, if any, and compensation which might arise from the encroachment of permittee upon property of the City of Athens that is the subject of this ordinance.

SECTION III: Said permit shall be subject to the following conditions:

1. This special right-of-way permit is personal in nature and will be in effect for a maximum of seven (7) years from the date of issuance unless revoked by City Council ordinance, or there is a change of ownership or use, whichever comes first.
2. SixtyFive Investments, LLC, owner, shall be responsible for the maintenance and upkeep of said right-of-way.

SECTION IV: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

_____
President of Council

ATTEST:

APPROVED:

_____
Clerk of Council

_____
Mayor

TITLE 49 APPLICATION

Use of the City's Public Rights of Way

(Office Use Only)
Permit #: T4925-000002
Date Recc'd: May 09, 2025

In accordance with Title 49, Application Fee: "At the time that a person submits an application for Use of Right of Way Permit, such person shall pay a non-refundable application fee of $50 payable to the City of Athens."

Applicant shall comply with all sections of Athens City Code Title 49 Right of Way. All required information shall be attached to application, including such thi ngs as but not limited to detailed site plans, a certificate of liability insurance listing City of Athens Ohio as certificate holder. Property owner shall be solely responsioble for the maintenance and upkeep of said right-of-way.

Contact Information:

1. Applicant: Riley Carlton SixtyFive Investments, LLC — Phone: (330) 365-4417
2. Mailing Address: _____ State: _____ Zip: _____
3. Email Address: rcarlton614@gmail.com
4. Address of Project/Site: 107 & 107 1/2 East State Street
5. Parcel Number: A027140006400 — Zoning Designation: _____
5. Property Owner: SixtyFive Investments LLC — Phone: (330) 365-4417
6. Property Owner Mailing Address: 7414 Cherry Hill Lane, Broadview Heights, OH 44147
6. Project Description: Confirming use of 9 total parking spots for rental property, instead of 7 spots.

I HEREBY SWEAR OR AFFIRM THAT ALL THE INFORMATION PROVIDED AND ATTACHED REQUIRED DOCUMENTATION ARE TO THE BEST OF MY KNOWLEDGE TRUTHFUL AND ACCURATE.

By signing property owner agrees to indemnify, and save the City of Athens harmless from all claims, demands, costs, expenses, real estate taxes, if any, and compensation which might arise from encroachment of permittee upon property of the City of Athens that is the subject of this Application.

Applicant Signature: Riley Carlton — Date: May 07, 2025

Property Owner Signature: _____ — Date: May 07, 2025

For Office Use Only

1. **Code Enforcement Admin:** Signature _____ Date 5/9/25

2. **Code Directors Review:** [X] Approved [ ] Refused [ ] Missing Documentation
Remarks:
Signature _____ Date 5-12-25

3. **City Engineer Review:** [X] Approved [ ] Refused [ ] Missing Documentation
Remarks:
Signature for Saleh Eldebaja Date 5/12-25

4. **Service Safety Review:** [X] Approved [ ] Refused [ ] Missing Documentation
Remarks:
Signature _____ Date 5/12/25

A027140006200
A027140006400
A027140006700
A027140006600
A02714

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 05/08/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Athens Insurance Services
375 Richland Ave.
Po Box 638
Athens OH 45701

CONTACT NAME:
PHONE (A/C, No, Ext): FAX (A/C, No): (740)593-6765
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Foremost Insurance Company	11185
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
Sixtyfive Investments LLC
13400 Scatter Ridge Rd
Athens OH 45701

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE / OCCUR x Landlords Liability GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / PRO-JECT / LOC OTHER:			381-5020284948-01	04/30/2025	04/30/2026	EACH OCCURRENCE	$ 1000000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
							PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY / SCHEDULED AUTOS HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR EXCESS LIAB / CLAIMS-MADE DED / RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE / OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
107 E State St Athens, OH 45701

CERTIFICATE HOLDER
Athens City Code Office
28 Curran Dr
Athens OH 45701

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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0-72-25

Introduced by Solveig Spjeldnes, Chair
Transportation Committee

AN ORDINANCE AMENDING ORDINANCE 57-25; CONSTRUCTION OF THE COLUMBUS ROAD SHARED USE PATH, PROJECT #365.

WHEREAS, ODOT has awarded the City safety funds for 90% of the eligible construction costs up to a cap of ~~$1,032,881~~ $1,380,000;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Sections II and III of Ordinance 57-25 are hereby amended to read as follows:

Section II: The 2025 Appropriation Ordinance 115-24 is hereby amended by appropriating from the unappropriated balance the following sums:

~~One Hundred Ninety Thousand Dollars ($190,000.00)~~ Two Hundred Sixty-Five Thousand Dollars ($265,000.00) to Street Fund, 220, T.C. 500; and

~~One Million Thirty-Two Thousand Eight Hundred Eighty-One Dollars ($1,032,881.00)~~ One Million Three Hundred Eighty Thousand Dollars ($1,380,000.00) to Small Cities ODOT Fund, 589, T.C. 500, and increasing the total appropriations by said amounts.

Section III: The Service-Safety Director is further authorized to expend up to ~~One Million Three Hundred Eighty-Two Thousand Eight Hundred Eighty-One Dollars ($1,382,881.00)~~ One Million Eight Hundred Five Thousand Dollars ($1,805,000.00) as follows:

~~Three Hundred Fifty Thousand Dollars ($350,000.00)~~ Four Hundred Twenty-Five Thousand ($425,000.00), of which One Hundred Sixty Thousand ($160,000.00) was authorized for engineering design services by Ordinance 05-24, from Street Fund, 220, T.C. 500; and

~~One Million Thirty-Two Thousand Eight Hundred Eighty-Two Dollars ($1,032,882.00)~~ One Million Three Hundred Eighty Thousand Dollars ($1,380,000.00) from Small Cities ODOT Fund, 589, T.C. 500, for said Project #365.

SECTION II: This Ordinance shall be in full force and effect upon passage and approval by the Mayor.

_____
President of Council

ATTEST:

APPROVED:

_____
Clerk of Council

_____
Mayor