

RESOLUTION NO. 40-15
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Brooks Compton ON THE
20th DAY OF July, 2015.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER, ON BEHALF OF THE CITY OF CENTERVILLE, TO EXECUTE AN AGREEMENT WITH THE GREATER DAYTON REGIONAL TRANSIT AUTHORITY TO PROVIDE FUNDING FOR SOLAR RECEPTACLES AT THREE BUS STOPS IN THE CITY OF CENTERVILLE AND APPROPRIATING \$50,000 FOR THE CONTRACT INDEMNIFICATION CLAUSE.

WHEREAS, the Greater Dayton Regional Transit Authority made funds available to jurisdictions to implement transit-related capital projects and to promote transit-related community development through an RTA Community Grant Program; and

WHEREAS, the City of Centerville applied for and was awarded funds in the amount of \$10,420.00 for the RTA Receptacle Project and the total cost of the project is estimated at \$13,025.00; and

WHEREAS, the Project Agreement requires the City to agree to appropriate \$50,000 as the maximum dollar amount liability per the agreement's indemnification clause.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized and directed to execute an agreement with the Greater Dayton Regional Transit Authority for the bus stop receptacle project, a copy of said agreement, marked Exhibit "A", is attached hereto and made a part hereof.

Section 2. The City hereby appropriates the sum of \$50,000 to be certified as available funds and representing the maximum dollar amount that the City would be liable under the indemnification clause of the agreement.

Section 3. This Resolution shall take effect at the earliest time allowed by law.

PASSED this 20th day of July, 2015.

C. Mark Keener
Mayor of the City of Centerville, Ohio

ATTEST:

Debra A. James
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 40-15, passed by the Council of the City of Centerville, Ohio, on the 20th day of July, 2015.

Debra A. James
Clerk of Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

2015

**GREATER DAYTON REGIONAL TRANSIT AUTHORITY
RTA COMMUNITY GRANTS PROGRAM
PROJECT AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into on the date(s) at the end hereof, by and between the **GREATER DAYTON REGIONAL TRANSIT AUTHORITY**, hereinafter referred to as "RTA," and the CITY OF CENTERVILLE, hereinafter referred to as the "Participant."

WITNESSETH:

WHEREAS, on November 5, 2002, acting on Resolution No. 2002-11-1, the RTA Board of Trustees re-established a process so that political jurisdictions can apply for funds to implement transit-related capital projects; and

WHEREAS, on November 5, 2002, the RTA Board of Trustees approved the use of one percent of its annual federal 5307 formula funds for the purposes of funding an RTA Community Grants Program; and

WHEREAS, the RTA Board has selected the Project (as hereinafter defined) of the Participant as one which will promote transit-related community development and has approved the expenditure of the eligible federal funds under its control specifically for the project to be undertaken by the Participant; and

WHEREAS, the RTA and Participant are desirous of mutually

cooperating in the funding of a transit-related capital project, situated within the boundaries of the RTA's service area known as 2015 RTA Big Belly Receptacle Project, hereinafter referred to as the "Project"; and

WHEREAS, the RTA is willing to use some of its federal allocated funds to foster same; and

WHEREAS, the Participant has approved this Agreement pursuant to Resolution/Ordinance No. _____, attached as an addendum to this Agreement; and

WHEREAS, as part of the RTA Community Grants Program and approved by the RTA Board of Trustees, the Participant was authorized to be awarded a distribution not to exceed the project grant award of \$10,420 @80%, \$13,025 total project cost @100% for 2015 RTA Big Belly Receptacle Project. The payment to the Participant will never be more than 80 percent of the actual cost of the approved Project and will not exceed the awarded amount (80 percent of the total Project cost as approved for this Project (see Attachment A); and

WHEREAS, the Participant has determined that the Project can be completed within 24 months of the execution date of this Agreement and the Participant is therefore eligible for participation in RTA's Community Grants Program.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with the intent to be legally bound, agree as follows:

1. The Participant agrees to assume responsibility of

administering the Project and to assume responsibility, as hereinafter described, for all future maintenance associated with the Project's result. The RTA agrees to tender to the Participant for the Project a maximum of 80 percent of actual eligible Project costs (see Attachment A), not to exceed the Project grant award of \$10,420.

2. The Participant agrees that the federal allocated funds referred to in paragraph 1 hereof will be used solely and exclusively by the Participant to offset the cost incurred by it in undertaking the Project, and further agrees that should any or all of the RTA federal allocated funds for this Project be used for any purpose other than that of the Project, the Participant will repay the RTA the amount improperly expended, and will do so within 14 calendar days of written notice to it by the RTA that such improper expenditure has occurred, stating therein the amount which the RTA believes has been misapplied.

3. The Participant agrees to supply RTA's Grants Administrator with statements or invoices indicating therein the amount of monies expended by the Participant in the furtherance of the Project. These statements, or invoices, will also contain a statement therein identifying the date of each expenditure, the name of the person or business enterprise paid, and the goods or services provided warranting the payment, copies of checks supporting payments made, and the signature of a Participant Official to attest that payments were incurred in furtherance of completing the Project. The RTA will, upon receipt of such statements or invoices at the completion of the

Project or as otherwise arranged, reimburse the Participant a maximum of 80 percent of the total eligible Project costs, not to exceed the Project grant award of \$10,420 (80 percent of the total approved Project cost - see Attachment A). Should the RTA be of the opinion that any of the identified RTA's Federal allocated funds are expended for purposes other than the furtherance of the Project, the RTA may, in its sole discretion, reduce such payment by the amount of the alleged misapplication, or seek reimbursement as same is provided in paragraph 2 hereof. The parties also agree that the RTA has the authority to meet with the contractor, person or business entity engaged by the Participant for the Project, and review documentation as it deems necessary to determine that the RTA's Federal allocated funds are being expended for Project purposes. RTA's commitment to reimburse Participant for these Project expenditures under this Agreement expires 24 months after the execution date of this Agreement.

4. The Participant agrees that the RTA's federal allocated funds are to be expended by the RTA in its sole discretion, and that the RTA's financial assistance to the Participant is voluntary and that the Participant has no legal or equitable claim to any of the RTA's federal allocated or non-allocated funds.

5. The Participant acknowledges that part of the consideration for this Agreement emanates from the RTA's federal allocated funds, and that as such, said consideration constitutes public funds, and the Participant acknowledges that

the RTA is legally authorized to inspect and make copies of the Participant's books regarding the Project and audit the receipt and expenditure of the federal allocated funds provided hereunder. The Participant, therefore, agrees to allow the RTA or its representatives, to enter upon its premises during regular business hours and to supply the RTA or its representatives, the book/financial records concerning the Participant's receipt and expenditure of the RTA federal allocated funds received by the Participant pursuant to this Agreement.

6. The Participant shall enter into and administer all construction, procurement and/or professional services contracts for the Project. The Participant agrees to adhere to all bidding procedures and regulations applicable to the Participant and/or the RTA for the reasonable and prudent selection of any and all third parties for the Project. The Participant will provide RTA, upon RTA's request, with summary competitive bid documentation and/or quotations for work to be contracted for the Project.

7. The Participant acknowledges that the receipt of federal funds must be reported as stipulated by U.S. Office of Management and Budget ("OMB") Circular No. A-133. As such the RTA must receive an OMB A-133 Report from the Participant within a reasonable time after approval by the State Auditor if the Participant is in receipt of \$500,000 or more in federal awards in the year the Community Grants Program funding is received. If the Participant does not receive \$500,000 or more in federal

awards in the year the Community Grants Program funding is received, then the Participant must provide a letter to the RTA stating such. For purposes of reporting, the Community Grants Program's Catalog of Federal Domestic Assistance ("CFDA") Number is 20.507.

8. The Participant agrees that all documentation, financial records and other evidence of Project activity under this Agreement shall be maintained by the Participant, consistent with the records retention requirements of the Ohio Revised Code and the federal grantor agency for the RTA Community Grants Program. At a minimum, the Participant shall maintain such documentation, financial records and other Project records for a period of three (3) years after the completion or termination of the Project. The Participant agrees to notify persons or business entities with which it does business in the prosecution of the work called for in the Project of the fact that such person or business entity is receiving public funds and that such funds may be audited by the RTA or its representatives even though the funds have been received by a private person or business entity.

9. The parties acknowledge that this Agreement is made pursuant to the RTA Community Grants Program and that the distribution of funds provided for herein is made pursuant to that Program and constitutes a distribution to the Participant there under.

10. The parties expressly agree that this Agreement shall not be assigned by the Participant without the prior written

approval of the RTA.

11. The Participant, or any person claiming through the Participant, agrees not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Participant violative of federal, state, or local laws, ordinances and regulations. Participant shall further abide by any and all rules and regulations governing the obtainment, collection, administration, and disbursement of federal, MVRPC, and JARC-Grant funds.

12. The Participant or its designee shall be the owner of all physical improvements constructed as part of the Project. The Participant shall be responsible for the continued maintenance, repair and upkeep of all Project property, and such property shall be maintained in a safe, clean and aesthetically pleasing condition throughout its use by Participant or useful life of the Project improvement(s) whichever is later.

13. The Participant agrees to include RTA provided signage at the construction site which communicates RTA's participation in the Project if the Participant is requested by RTA to do so.

14. The Participant agrees to provide the RTA with photographs that clearly display the improvements obtained through the Project (before and after photographs).

15. The Participant agrees to maintain the Project in such a way as for the Project to achieve its anticipated useful life, achieve a favorable appearance, and to contribute to the safety

of all of those who come into contact with the Project/facility. Failure to comply with this requirement will cause the Participant to reimburse the RTA for its contributed funding. The RTA retains the right to inspect the Project/facility throughout its anticipated life to make determination of the Participant's adherence to this maintenance requirement.

16. The Participant agrees to complete this Project within the time frame stipulated at the execution date of this Agreement at which point this Agreement terminates. Application for reimbursement must be made within 60 days after this period expires, unless otherwise arranged, for the Participant to be assured of reimbursement.

17. To the extent permitted by law, the Participant will be responsible for losses, penalties, damages, settlements, costs or liabilities of every kind and character arising out of or in connection with any negligent acts or acts of omission of the Participant, and its employees and officers in connection with the completion of the Project. Notwithstanding the foregoing, the Participant does not waive any applicable immunities under Ohio law. Further, the maximum dollar amount that the Participant is obligated to pay under this indemnification provision is \$ ^{46,500,000} ~~100,000~~ which amount has been appropriated and certified as available in accordance with Ohio Revised Code Section 5705.41(D)(1). The parties further agree that the consideration is sufficient to meet/support the Participant's obligation under the indemnification clause.

18. Either party may terminate this Agreement by serving

written notice on the other party at least 14 calendar days before the effective date of such termination as is mentioned in the notice conditioned that no work on the Project has been initiated.

19. RTA may terminate this agreement for any reason after work is initiated by providing written notice of same to Participant. If said Project is canceled by RTA after work has been initiated, the RTA is not obligated to reimburse for any expenses incurred up to that time. If reimbursement of expenses has occurred and the Project is canceled and/or this Agreement is terminated under paragraph 20, the Participant will return to RTA all funds provided by RTA under this Agreement for the Project.

20. If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. However, if such invalid or unenforceable provision materially changes either party's responsibilities hereunder, either party may terminate this Agreement, subject to paragraphs 18 and 19.

21. This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties to this

Agreement. Also, this Agreement shall not be modified in any manner except by an instrument, in writing, executed by the parties to this Agreement and approved by proper Resolution of the parties, if necessary.

22. This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of The State of Ohio and regulations of the Federal Transit Administration (FTA).

23. Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have hereunto set their hands
this ____ day of _____, 2015

Signed and acknowledged
in the presence of:

GREATER DAYTON
REGIONAL TRANSIT AUTHORITY

Witness

By: _____
Executive Director

Witness

APPROVED AS TO FORM:

Dwight A. Washington, Attorney
For the Greater Dayton Regional
Transit Authority

CITY OF CENTERVILLE, OHIO

Witness

By: _____
City Manager

Witness

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney