

RESOLUTION NO. 28-09
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Beale ON THE 20th
DAY OF July, 2009.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION (ODOT) AND THE CITY OF CENTERVILLE TO IMPROVE AND MAINTAIN THE INTERCHANGE OF IR-675 AND SR-48 HIGHWAY LANDSCAPING.

WHEREAS, the City of Centerville and the Ohio Department of Transportation, hereinafter referred to as "ODOT" have cooperated in the establishment, construction, reconstruction and improvement of public roads and bridges; and

WHEREAS, ODOT had received federal funding to assist the City in purchasing plants and landscaping material to be used in eligible gateway landscaping projects; and

WHEREAS, the City has determined that the improvements to the interchange of Interstate Route 675 and State Route 48 is an eligible gateway landscaping project; and

WHEREAS, ODOT and the City intend to be parties to an agreement to construct landscaping improvements to the interchange of Interstate Route 675 and State Route 48; and

WHEREAS, the City and ODOT are negotiating an agreement, a draft copy of which is attached hereto as Exhibit "A"; and

WHEREAS, this Council has determined that it would be in the best interests of the citizens of Centerville to enter into such an agreement,

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1: The City Manager is hereby authorized and directed to enter into an agreement between ODOT and the City of Centerville for the improvements and maintenance of the interchange of Interstate Route 675 and State Route 48 for landscaping service upon the terms and conditions

H. d. m. >

substantially similar to those set forth in the draft Agreement, attached hereto as Exhibit "A".

PASSED THIS 20th day of July, 2009.

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

ATTEST:

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

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 28-09, passed by the Council of the City of Centerville, Ohio on the 20th day of July, 2009.

Debra A. James
Clerk of the Council

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

Department of Law
Scott A. Liberman
Municipal Attorney

Standard GLP Agreement mod. April 16, 2009

ODOT Agreement No. 7-168-09

**AGREEMENT
BETWEEN THE STATE OF OHIO,
DEPARTMENT OF TRANSPORTATION
AND THE CITY OF CENTERVILLE
TO IMPROVE AND MAINTAIN THE INTERCHANGE OF
IR-675 AND SR-48 HIGHWAY LANDSCAPING**

This agreement is made by and between the State of Ohio, acting by and through the Director of the Ohio Department of Transportation (hereinafter referred to as "ODOT"), 1980 West Broad Street, Columbus, Ohio 43223 and the City of Centerville, Ohio (hereinafter referred to as the "City").

1. PURPOSE

- 1.1 Sections 5501.11(A)(4) and 5501.31 of the Ohio Revised Code provide that ODOT may cooperate with municipal corporations in the establishment, construction, reconstruction, and improvement of public roads and bridges.
- 1.2 Section 5501.03(A)(3) of the Ohio Revised Code provides that the director of Transportation may coordinate the activities of the Department of Transportation with other appropriate public authorities and enter into contracts with such authorities as necessary to carry out its duties, powers and functions.
- 1.3 ODOT has received federal funding through the Federal Transportation Enhancement program to be used for eligible gateway landscaping projects ("GLP") and ODOT wishes to use such funds to purchase plants and landscaping material to be on GLP projects.
- 1.4 The CITY has determined that it is in the public interest and for the benefit of public safety to construct improvements to the interchange of IR-675 and SR-48 (hereinafter known as the "PROJECT").
- 1.5 ODOT has determined that this PROJECT is eligible for GLP funding and wishes to purchase eligible plants and landscaping materials to be used in the PROJECT.
- 1.6 The CITY is willing to provide, by way of construction, the costs associated with constructing the improvements and is willing fully to cooperate with ODOT in completing and maintaining the PROJECT and ODOT is willing to accept the contribution under certain conditions.

2. **SCOPE OF WORK**

2.1 The work to be performed under this Agreement shall consist of the following:

The design and construction and future maintenance of plantings and associated landscaping materials as fully described in the construction plans and approved by ODOT, Office of Maintenance Administration, ODOT Agreement No.7-168-09.

2.2 All work on the PROJECT shall be accomplished in accordance with the latest Design Criteria, Standard Drawings and Construction and Materials Specifications of ODOT, which shall include provisions for a Maintenance of Traffic Plan (“Plans and Specifications”), as agreed to by the CITY.

3. **OBLIGATION OF THE CITY OR VILLAGE**

3.1 The CITY agrees to furnish, at no cost to ODOT, a complete set of the Plans and Specifications of the PROJECT prepared by **Envision-Works Inc.**, and to submit the same in a timely manner for review and approval by ODOT and, if necessary, the FHWA.

3.2 The CITY agrees to cooperate with ODOT and, where necessary, the FHWA in obtaining the approval of the PROJECT Plans and Specifications by all necessary parties.

3.3 The CITY agrees to pay the entire construction cost of the PROJECT including, but not limited to, plantings and associated landscape materials, as detailed in the Plans and Specifications and in subsequent construction change orders. As herein, “construction cost” means that total initial contract price adjusted upward or downward for change orders and claims made under the Construction and Material Specifications or under this Agreement.

3.4 The CITY agrees to pay all costs and perform all construction, inspection, supervision, sampling and testing for the PROJECT.

3.5 The CITY agrees to provide ODOT an executed copy of the Construction Agreement between the CITY and its contractor.

3.6 The CITY agrees to submit a detailed and approved invoice of all expenditures for eligible plant materials to ODOT within thirty (30) days of the completion of the PROJECT.

4. **OBLIGATIONS OF ODOT**

- 4.1 ODOT agrees to grant to the CITY a permit to use and occupy the ramps and rights-of-way in and abutting **IR-675 / SR-48** for purposes of construction of this PROJECT.
- 4.2 ODOT agrees to purchase plants and landscaping materials, an amount not to exceed **28,000 Dollars and 00 Cents (\$28,000)** from its allocation of TE federal funds for eligible plant materials purchased for the PROJECT.
- 4.3 ODOT will carefully review the right-of-way permit application and conduct a review of potential environmental impacts prior to right-of-way permit approval. As such, each District Environmental Coordinator will be responsible for assessing the project area and completing the necessary environmental documentation, if warranted, per the Programmatic Categorical Exclusion Agreement between The Federal Highway Administration and the Ohio Department of Transportation dated March 6, 2003. Due to the limited scope of work for vegetation removal projects, it is likely that many of these projects will be exempt from environmental documentation. In the case where impacts or project criteria require a higher level of documentation ODOT will complete the appropriate documentation per the CE agreement.

5. **CONSTRUCTION**

- 5.1 The construction of the PROJECT will be accomplished by the CITY letting a contract to a contractor pre-qualified by ODOT (as determined by and contained in a list prepared by the Ohio Department of Transportation) or by the CITY's own forces.
- 5.2 The CITY further agrees to require its contractor to pay wages based on the prevailing wage rates and to comply and have its contractor comply with all equal employment and civil rights provisions.
- 5.3 The CITY shall prepare Plans and Specifications for any change orders required for satisfactory completion of the work.
- 5.4 The CITY shall certify that the construction is completed in accordance with the provisions of the Agreement and in accordance with the current ODOT Construction and Materials Specifications and other appropriate and applicable specifications.
- 5.5 If the CITY does anything contrary to the approved plans and specification and after due notice, fails to correct such action, ODOT may take those measures contained in the Construction and Materials Specifications to ensure full restitution and compliance.

- 5.6 Highway property, disturbed by the CITY, shall be restored using materials, design and workmanship in conformance with the Ohio Department of Transportation Construction and Material Specifications, Location and Design Manual, or other existing Department Standards.
- 5.7 All work requiring men or vehicles on the pavement or shoulders shall comply with all of the requirements of the Ohio Manual of Uniform Traffic Control Devices and Item 614 (Maintaining Traffic) of the Ohio Department of Transportation Construction and Materials Specifications. Failure to comply with the requirement will be cause for immediate suspension of contract work until the proper traffic controls have been provided.
- 5.8 The CITY, upon completion of the work, shall leave the highway clean of all rubbish, excess materials, temporary structures and equipment and all parts of the highway disturbed by the PROJECT shall be left in acceptable condition.

6. **NOTICE**

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

City of Centerville
100 W. Spring Valley Rd.
Centerville, Ohio 45458
Attn: Nathan Cahall
Telephone: (937) 433-7151

Ohio Department of Transportation
1001 St. Marys Avenue
Sidney, Ohio 45365
Attn: Rex Dickey, P.E., P.S.
Telephone: (937) 497-6777

7. **BREACH OF CONTRACT**

- 7.1 Neglect or failure of the CITY to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, shall be an event of default, unless such failure or misrepresentation are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the CITY's control. The CITY, however, shall remedy as soon as possible each cause preventing its compliance with this Agreement.
- 7.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the CITY shall have thirty days or a time negotiated with ODOT from the date of such notification to remedy the causes preventing its compliance and curing the default situation. Expiration of the thirty days or negotiated time and failure by the CITY to remedy the default shall result in termination of this Agreement by ODOT.

7.3 Upon a termination of this Agreement by ODOT, ODOT shall conduct an inspection of the PROJECT to determine whether or not the PROJECT has been completed to a degree acceptable to ODOT. If the PROJECT is not completed to a degree and condition acceptable to ODOT, then ODOT may take any measures necessary to complete the PROJECT. The CITY shall be held responsible for full restitution of all expenses incurred in completing the PROJECT.

7.4 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 CITY 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.

8. MAINTENANCE

8.1 The CITY agrees to keep the exit and entrance ramps to the interchange of **IR-675 / SR-48** open to traffic at all times while performing any maintenance activities.

8.2 The CITY agrees to perform all maintenance activities required by industry practices to maintain the PROJECT in an attractive manner. "Maintenance activities" can include, but shall not be limited to: litter removal, repairing the concrete edging, repairing the retaining wall, on-going landscape maintenance, repair or replacement of any dead trees or plants and repair, mowing or replacement of ground cover. (List in this section what maintenance activities will take place, when they will take place how often, and any other specifics concerning the maintenance of the project.)

8.3 The CITY agrees to make ample financial and other provisions for such maintenance of the PROJECT after its completion.

8.4 ODOT agrees to grant to the CITY any necessary permits to use and occupy the ramps and rights-of-way in and abutting **State Route 48 and Interstate Route 675** for purposes of maintaining landscaping in an attractive manner.

8.5 The CITY agrees to submit any additional landscaping plans to ODOT for prior approval or to submit changes, additions, or deletions to existing landscaping to ODOT for prior in a timely manner.

8.6 ODOT agrees to allow the City to provide for and maintain landscaping around any and all of the guardrails abutting State Route 48 and Interstate Route 675; subject to the City's agreement to waive any responsibility of ODOT to maintain such landscaping. ODOT shall

not be held responsible for any reasonable damage to or destruction of said landscape located around the guardrails.

9. **GENERAL PROVISIONS**

- 9.1 The signing of the Agreement does not in any way abridge the right of the Director of Transportation in his jurisdiction over the state highway system. If, at any time, it becomes necessary, in the opinion of the Director of Transportation to order the removal, reconstruction, relocation, or repair of any of the improvements made under the Agreement, said removal, reconstruction, relocation or repair shall be completed wholly at the expense of the CITY, and be made as directed by the Director of Transportation.
- 9.2 This Agreement and Permit No. **7-168-09** constitutes the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement.
- 9.3 Neither this Agreement nor any rights, duties, or obligation described herein shall be assigned by either party hereto without the prior express written consent of the other party. Any change to the provisions of this Agreement must be made in a written amendment executed by both parties.
- 9.4 This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio.
- 9.5 The District Deputy Director of **District Seven (7)** shall have full authority to ensure the full compliance of the provisions of this Agreement.
- 9.6 The signing of the Agreement or the doing of any work there under shall constitute an agreement by the CITY to comply with all of the conditions and restrictions of this Agreement and the Permit printed or written herein.
- 9.7 The CITY shall be responsible for all suits, actions or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect or on account of any wrongful act or omission on the part of the CITY as a result of the construction or maintenance of the PROJECT.
- 9.8 The CITY shall comply with the Air Pollution requirements of Rule 3745-17-08 of the Ohio Administrative Code promulgated and enforced by the Ohio Environmental Protection Agency.

10. **CERTIFICATION OF FUNDS**

10.1 It is expressly understood by the parties that all financial obligations of the State of Ohio are subject to the provisions of Section 126.07 of the Ohio Revised Code. The financial obligations of the State of Ohio shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by ODOT. If the Ohio General Assembly fails at any time to continue funding for GLP projects hereunder, this Agreement is hereby terminated as of the date that the funding expires without further obligation of ODOT.

11. **TERMINATION**

11.1 Either party may terminate this agreement by giving the other party ninety (90) days written notice.

11.2 All funding commitments made by ODOT in this Agreement shall commence on the date of the last signature hereto and shall expire on **11/15/2014**. At that time, ODOT may renew this Agreement on the same terms and conditions for a period beginning **11/15/2014**, and ending no later than **11/15/2019**, or earlier provided that the party's contractual obligations have been completed, by giving written notice to the CITY by O.D.O.T.

11.3 All maintenance obligations of the CITY shall commence upon completion of the PROJECT and shall expire four years thereafter, unless otherwise extended by mutual agreement of both parties.

12. **SIGNATURES**

12.1 Any person executing this agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this agreement on such principal's behalf.

THE STATE OF OHIO
Department of Transportation

CITY OF CENTERVILLE

Jolene M. Molitoris

City Manager

Director

Date: _____

Date: _____