

RESOLUTION NO. 45-07
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Douglas Cline ON THE
15th DAY OF October, 2007.

A RESOLUTION AUTHORIZING THE CITY MANAGER, ON BEHALF OF THE CITY OF CENTERVILLE, TO ENTER INTO AN AGREEMENT BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION AND THE CITY OF CENTERVILLE TO PROVIDE FUTURE MAINTENANCE OF THE INTERSTATE 675 AND STATE ROUTE 48 INTERCHANGE ENHANCEMENT PROJECT.

WHEREAS, The City of Centerville desires to enter into a Project Maintenance Agreement with The Ohio Department of Transportation (ODOT) that establishes maintenance responsibilities of the enhancement features of the Centerville Gateway Enhancement project on State Route 48 over I-675, and

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager be and is hereby authorized to execute an Agreement between the City of Centerville and The Ohio Department of Transportation (ODOT) to enter into a Project Maintenance Agreement, a copy of said Agreement which is attached hereto and incorporated herein, marked Exhibit "A".

Section 2. That the City Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreement.

PASSED this 15th day of October, 2007.

C. Mark King
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 45-07, passed by the Council of the City of Centerville, Ohio, on the 15th day of October, 2007.

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

**AGREEMENT
BETWEEN STATE OF OHIO,
DEPARTMENT OF TRANSPORTATION
AND THE CITY OF CENTERVILLE
TO PROVIDE FUTURE MAINTENANCE OF THE
INTERSTATE 675 AND STATE ROUTE 48
INTERCHANGE ENHANCEMENT PROJECT.**

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"), 100 Spring Valley Road, Centerville, Ohio 45458-3759.

1. PURPOSE

- 1.1_ Sections 5501.11(D) and 5501.31 of the Ohio Revised Code provides that the State of Ohio, Department of Transportation (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 ODOT 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 determined that it is in the public interest and for the benefit of public safety to proceed with improvements to the interchange and highway landscaping improvements to Interstate 675 and State Route 48, in the City of Centerville, Montgomery County, Ohio.
- 1.4_ The City has determined that it is in the public interest to construct improvements to the interchange and highway areas to Interstate 675 and State Route 48.
- 1.5_ The purpose of this Agreement is to set forth the maintenance responsibilities of the parties.

2. **SCOPE OF WORK**

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

The design and construction of enhancements at the State Route 48 bridge over Interstate 675, including the decorative fencing on the structure parapets, the Centerville logo on the decorative fencing, the stone piers and decorative iron fencing located in the SE, SW, NE and NW quadrants near the structure, as fully described in the construction plans titled "Centerville Gateway Enhancement, MOT-48-4.33, PID# 76262".

2.2 All work will 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 and hereafter referred to as the "PROJECT".

3. **OBLIGATION OF THE CITY**

3.1 The City agrees to cooperate with ODOT and, where necessary, the FHWA in obtaining the approval of the City of Centerville, MOT-48-4.33, PID# 76262 Interchange & Highway Landscaping Plans and Specifications by all necessary parties.

4. **OBLIGATION 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 Interstate 675 and State Route 48 for purposes of construction of this improvement.

4.2 ODOT agrees to review and address any issues in the landscape plans in a timely manner.

5. **NOTICE**

5.1 Notice under this Agreement shall be directed as follows:

City of Centerville
Public Service Department

Ohio Department of Transportation
District 7

6. **BREACH OF CONTRACT:**

- 6.1 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.
- 6.2 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. GENERAL PROVISIONS

- 7.1 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 fixtures, or work performed with the general scope of work and change orders, if any, under the Agreement, said removal, reconstruction, relocation or repair work performed within the general scope and change orders of this agreement, shall be completed wholly at the expense of the CITY, and be made as directed by the Director of Transportation.
- 7.2 This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement.
- 7.3 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.
- 7.4 This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio.
- 7.5 The District Deputy Director of District 7 shall have full authority to ensure the full compliance of the provisions of this Agreement.
- 7.6 The signing of the Agreement or the doing of any work thereunder shall constitute an agreement by the CITY to comply with all of the conditions and restrictions printed or written herein.
- 7.7 The CITY shall save harmless the State of Ohio and all of its representatives from 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.

8. MAINTENANCE

- 8.1 The City agrees to keep said highway open to traffic at all times
- 8.2 The City agrees to maintain the PROJECT, including but not limited to, removal of dead plantings, pruning or removal of clear zone encroachments, or any other items deemed a hazard or a conflict to the Ohio Department of Transportation Aesthetic Design Guidelines, in a timely manner in accordance with the provisions of the statutes relating thereto; to make ample financial and other provisions for such maintenance of the PROJECT after its completion.
- 8.3 The City agrees to repair/replace any damaged enhancement beyond the Ohio Department of Transportation standard, in a timely manner. (Example - Painted black approach guardrail will be repaired with standard galvanized guardrail, if repair is done by ODOT forces.)
- 8.4 If necessary, ODOT agrees to repair and/or replace the enhancements with materials that meet the current accepted standards as set forth by the Ohio Department of Transportation, once it has been determined the City will not be repairing the enhancement.
- 8.5 ODOT agrees to grant to the CITY any necessary permits to use and occupy the ramps and rights-of-way for purposes of maintaining all enhancements in an attractive manner. Permits may be obtained from the Montgomery County Manager, at 300 Smith Drive, Englewood, Ohio 45315, or by calling 937-832-1824.

9. TERMINATION

- 9.1 The terms and conditions of this Agreement shall be reviewed at a meeting to be held by the parties every two years, coinciding with the State of Ohio's biennium. The first review shall occur no later than June 30, 2006. At the time of review, the parties shall determine whether the terms and conditions of this Agreement are still satisfactory to each party or whether modifications are required. If modifications are required, such changes shall be made by written amendment executed by both parties. Each party is free to request modifications to the terms and conditions of this Agreement at any time while this Agreement is in effect and such modifications may be made by written amendment upon the mutual agreement of both parties.

10. **DISPUTES**

10.1 In the event that any dispute arises between the STATE and the CITY concerning interpretation of or performance pursuant to the Agreement, such dispute shall be resolved in a mutually acceptable manner by the Director and the City Manager.

11. **SIGNATURES**

11.1 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

Director

Title: _____

Date: _____

Date: _____