

**RESOLUTION RECORD**  
**COUNCIL OF THE CITY OF BRECKSVILLE**

Resolution No. 5595

**A RESOLUTION AMENDING SECTION 1. OF  
RESOLUTION NO. 5577 TO AMEND THE  
APPOINTMENT EFFECTIVE DATE;  
AND DECLARING AN EMERGENCY**

**WHEREAS, WHEREAS**, at its meeting on August 6, 2024, the Council of the City of Brecksville adopted Resolution No. 5577 appointing Brent A. Boyko to the position of full-time firefighter/paramedic in the Fire Department of the City of Brecksville; and

**WHEREAS**, the effective date of such appointment must be amended.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Brecksville, County of Cuyahoga, and State of Ohio, that:

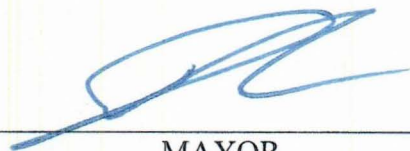
**SECTION 1.** Section 1. of Res. No. 5577 be, and the same hereby is, amended as follows:

**SECTION 1.** Upon the recommendation of the Director of Public Safety, Brent A. Boyko be and he is hereby appointed to the position of full-time Firefighter/Paramedic for the Fire Department of the City of Brecksville, effective ~~August 6, 2024~~ **August 7, 2024.**"

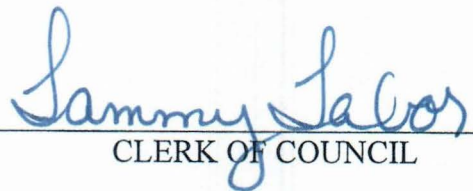
**SECTION 2.** The Council declares this Resolution to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, the reason for the emergency being that it relates to the daily operation of a municipal department, therefore, this Resolution shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise, from and after the earliest period allowed by law.

PASSED: September 3, 2024

APPROVED: September 3, 2024



MAYOR



CLERK OF COUNCIL

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 5595 duly passed by the Council of the City of Brecksville, Ohio, on 9-3, 20 24 and that same was duly posted in accordance with the existing Charter of the City of Brecksville on 9-6, 20 24.



CLERK OF COUNCIL

**RESOLUTION RECORD**  
**COUNCIL OF THE CITY OF BRECKSVILLE**

Resolution No. 5596

**A RESOLUTION AMENDING SECTION 1. OF  
RESOLUTION NO. 5592 TO AMEND THE  
APPOINTMENT EFFECTIVE DATE;  
AND DECLARING AN EMERGENCY**

WHEREAS, at its meeting on August 20, 2024, the Council of the City of Brecksville adopted Resolution No. 5592 appointing Viorel A. Psepolschi to the position of police officer in the Police Department of the City of Brecksville; and

WHEREAS, the effective date of such appointment must be amended.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Brecksville, County of Cuyahoga, and State of Ohio, that:


**SECTION 1.** Section 1. of Res. No. 5592 be, and the same hereby is, amended as follows:

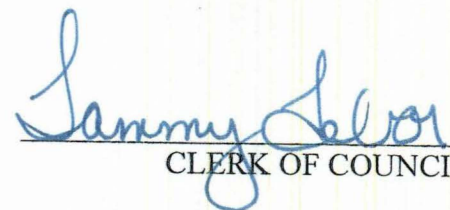
“**SECTION 1.** Upon the recommendation of the Director of Public Safety, Viorel A. Psepolschi be and he is hereby appointed to the position of Police Officer in the Police Department of the City of Brecksville effective ~~August 20, 2024~~ **August 21, 2024.**”

**SECTION 2.** The Council declares this Resolution to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, the reason for the emergency being that it relates to the daily operation of a municipal department, therefore, this Resolution shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise, from and after the earliest period allowed by law.

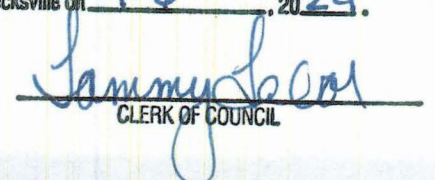
PASSED: September 3, 2024

APPROVED: September 3, 2024

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CLERK OF COUNCIL

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 5596 duly passed by the Council of the City of Brecksville, Ohio, on 9-3, 2024 and that same was duly posted in accordance with the existing Charter of the City of Brecksville on 9-6, 2024.

  
\_\_\_\_\_  
CLERK OF COUNCIL

**RESOLUTION RECORD**  
**COUNCIL OF THE CITY OF BRECKSVILLE**

Resolution No. 5597

**A RESOLUTION AUTHORIZING THE MAYOR  
TO APPLY FOR A GRANT THROUGH THE  
2025 CUYAHOGA COUNTY SUPPLEMENTAL  
GRANT PROGRAM FOR FUNDING TO IMPLEMENT  
A COMMUNITY DEVELOPMENT PROJECT;  
AND DECLARING AN EMERGENCY**

**WHEREAS**, Cuyahoga County has solicited applications for the 2025 Community Development Supplemental Grant Program that provides grant funding for a variety of projects to help strengthen cities, encourage regional collaboration and improve the quality of life for County residents; and

**WHEREAS**, The City of Brecksville intends to submit an application to Cuyahoga County for such grant funding to meet a community development need related to the health and welfare of the community, and the city held a public hearing for said grant funding to solicit public input on August 20, 2024; and

**WHEREAS**, The program provides one hundred percent (100%) reimbursement for eligible project costs in an amount not to exceed fifty thousand dollars (\$50,000), requiring the applicant to first expend funds and then request reimbursement from Cuyahoga County.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Brecksville, County of Cuyahoga, and State of Ohio, that:

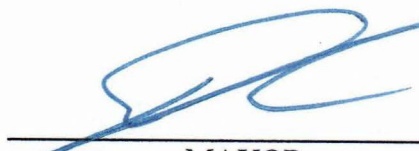
**SECTION 1.** The Mayor be and is hereby authorized to apply, on behalf of the City of Brecksville, for a grant through the 2025 Cuyahoga County Supplemental Grant Program for funding to implement a community development project. The Mayor is further authorized to execute whatever documents are needed in furtherance of this grant application. In addition, in the event the City of Brecksville is successful in securing this grant, the Mayor is further authorized to execute whatever documents and to take the necessary steps to effectuate the receipt of these grant funds and the Director of Finance is hereby authorized to credit the proceeds of any grant to the appropriately designated Fund.

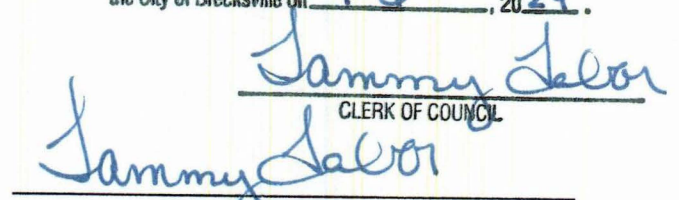
**SECTION 2.** The Council declares this Resolution to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, the reason for the emergency is to meet a deadline for application on September 16, 2024, therefore, said Resolution shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise, from and after the earliest period allowed by law.

PASSED: September 3, 2024

APPROVED: September 3, 2024

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 5597 duly passed by the Council of the City of Brecksville, Ohio, on 9-3, 2024 and that same was duly posted in accordance with the existing Charter of the City of Brecksville on 9-6, 2024.

  
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MAYOR

  
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CLERK OF COUNCIL

**RESOLUTION RECORD**  
**COUNCIL OF THE CITY OF BRECKSVILLE**

Resolution No. 5598

**A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR FUNDING FROM THE DISTRICT ONE PUBLIC WORKS INTEGRATING COMMITTEE IN CONJUNCTION WITH THE OHIO PUBLIC WORKS COMMISSION FOR THE FY 2026 STATE CAPITAL IMPROVEMENT PROGRAM FOR THE HIGHLAND DRIVE AND SENTINEL DRIVE CULVERT REPLACEMENT PROJECT; AND DECLARING AN EMERGENCY**

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Brecksville, County of Cuyahoga, and State of Ohio, that:

**SECTION 1.** The Mayor be and hereby is authorized to apply for funding from the District One Public Works Integrating Committee in conjunction with the Ohio Public Works Commission for the FY 2026 State Capital Improvement Program for the Highland Drive and Sentinel Drive Culvert Replacement Project. The Mayor is further authorized to execute whatever documents are needed in furtherance of this grant application. In addition, in the event the City of Brecksville is successful in securing this grant, the Mayor is further authorized to execute whatever documents and to take the necessary steps to effectuate the receipt of these grant funds and the Director of Finance is hereby authorized to credit the proceeds of any grant to the appropriately designated Fund.

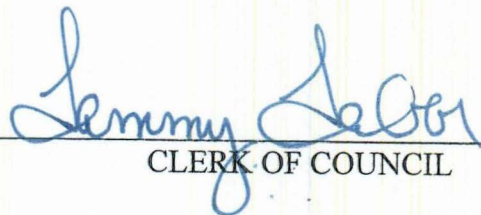
**SECTION 2.** The Council declares this Resolution to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, the reason for the emergency is the need to meet the September 12, 2024 application deadline, therefore, said Resolution shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise, from and after the earliest period allowed by law.

PASSED: September 3, 2024

APPROVED: September 3, 2024

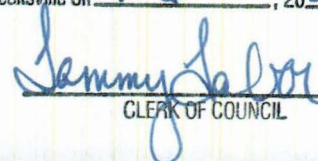


MAYOR



CLERK OF COUNCIL

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 5598 duly passed by the Council of the City of Brecksville, Ohio, on 9-3, 2024 and that same was duly posted in accordance with the existing Charter of the City of Brecksville on 9-6, 2024.



CLERK OF COUNCIL

**RESOLUTION RECORD**  
**COUNCIL OF THE CITY OF BRECKSVILLE**

**5599**

Resolution No. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE MAYOR  
TO ENTER INTO A SUBDIVISION AGREEMENT  
AND ESCROW AGREEMENT WITH HARRIS PARK  
DEVELOPMENT, LLC FOR THE HIGHLAND PARK  
SUBDIVISION; AND DECLARING AN EMERGENCY**

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Brecksville, County of Cuyahoga, and State of Ohio, that:

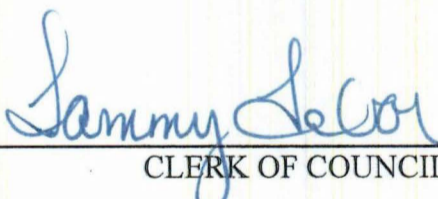
**SECTION 1.** The Mayor be, and he hereby is, authorized to enter into a Subdivision Agreement and Escrow Agreement with Harris Park Development, LLC for the Highland Park Subdivision, a copy of which Agreements are attached hereto as Exhibit "A" and expressly made a part hereof by reference.

**SECTION 2.** The Council declares this Resolution to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, the reason for the emergency is the necessity to implement the Agreements, therefore, said Resolution shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise, from and after the earliest period allowed by law.

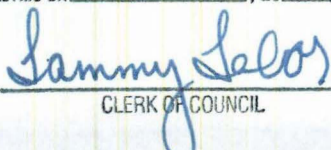
PASSED: \_\_\_\_\_ September 3, 2024

APPROVED: \_\_\_\_\_ September 3, 2024

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CLERK OF COUNCIL

I do hereby certify that the foregoing is a true and correct copy of Resolution No. 5599 duly passed by the Council of the City of Brecksville, Ohio, on 9.3, 2024 and that same was duly posted in accordance with the existing Charter of the City of Brecksville on 9.6, 2024.

  
\_\_\_\_\_  
CLERK OF COUNCIL

**SUBDIVISION AGREEMENT**  
**Highland Park Residential Subdivision**

**THIS AGREEMENT**, made and entered into at Cleveland, Ohio this 3 day of September, 2024,  
by and between the City of Brecksville, an Ohio Municipal Corporation, hereinafter referred to as "CITY;"  
and Harris Park Development, LLC, an Ohio Corporation, hereinafter referred to as "DEVELOPER."

**WITNESSETH**

**WHEREAS**, The Plat and Improvement Plans of Highland Park Residential Subdivision , hereinafter referred to as "Highland Park", have been previously presented to the Council of CITY for approval; and

**WHEREAS**, DEVELOPER will be installing certain improvements in accordance with Chapters 1119 and 1123 of the Codified Ordinances of the City; and

**WHEREAS**, Chapter 1119 of the Codified Ordinances of the CITY requires the completion of all required improvements within a subdivision, with a guarantee of completion of all improvements prior to the recording of a plat for record purposes; and

**WHEREAS**, DEVELOPER desires to install these required improvements, to deposit a cash guarantee and has presented its Improvement Plan to CITY, a copy of said plan is attached hereto and marked Exhibit "A" (the "Improvement Plan"); and

**WHEREAS**, the City has established and the DEVELOPER has previously funded a Private Purpose Trust Fund being Fund No. 781, in the amount of Thirty-Five Thousand Dollars (\$35,000.00) for the improvements provided for in this Subdivision Agreement and the Improvement Plan.

**NOW, THEREFORE,** the CITY and DEVELOPER hereby mutually promise and agree as follows:

1. DEVELOPER promises and agrees that on or before the expiration of one (1) year from the date hereof it will construct, install and maintain, within the areas shown and described on the Improvement Plan, at its sole expense, and without any cost, expense or liability whatsoever to the CITY, storm sewer lines, sanitary sewer lines, storm water storage and detention facilities, water mains and appurtenances thereto, service connections, the grading and construction of deep strength asphalt pavement with reinforced concrete curbs and appurtenances incident to the street(s) as shown in the Improvement Plans, clearing, grading and seeding of land, installation of erosion control measures, perimeter drainage control, trench settlement and other settlement abatement on all common property and all sublots. All of the improvements shall be installed in accordance with the plans and specifications approved by the Engineer of the CITY and as contained in the Improvement Plan and in accordance with the Ordinances, regulations and specifications of the CITY, and in the case of water mains by the Utilities Department of the City of Cleveland and in the case of the sanitary and storm sewer lines by the Cuyahoga County Department of Public Works (Sanitary Division).

2. DEVELOPER agrees to install Highland Park entrance signage and landscaping as approved by the Planning Commission of the CITY. Such improvements shall be part of the required Highland Park improvements included in both Paragraph 4 below and in Paragraph 1 of the Escrow Agreement attached hereto as Exhibit "B" and incorporated herein by this reference (the "Escrow Agreement").

3. DEVELOPER further agrees, that if the CITY accepts the aforementioned improvements upon their completion and approval by the Engineer of the CITY, to maintain said improvements in good repair and free from defects for a period of two (2) years following the acceptance of the dedication thereof to public use by the CITY, regardless of whether such defects arise from defects in workmanship or defective materials, or otherwise.

4. Developer deposited the sum of Thirty-Five Thousand Dollars (\$35,000.00) with the CITY for tree felling. On account of that work being completed, said sum shall be placed in Private Purpose Trust Fund No. 781 (the "Trust Fund") to be used solely to finance and pay the total cost of all the required Highland Park improvements as provided for in this Agreement. CITY and DEVELOPER agree that disbursement of the aforesaid funds shall be made only upon certification by the Project Engineer, approved by the DEVELOPER and the Engineer of the CITY in accordance with the terms of an Escrow Agreement.

5. At the time of filing the Plat, it is anticipated that certain work will be incomplete. An itemization of the expected remaining work is attached hereto as Exhibit "C" and incorporated herein by this reference, which is anticipated to cost approximately One Hundred Fifteen Thousand Dollars (\$115,000.00). Prior to filing the Plat, City and Developer will verify any incomplete items and adjust the additional deposit accordingly. Said amount will be deposited into the Trust Fund, which, together with the initial deposit already in the Trust Fund, will be used as a guarantee to complete work remaining to be done in Highland Park after the Plat is recorded. Upon CITY's acceptance of the Bond, as defined below, CITY agrees to accept dedication of the public right-of-way and other infrastructure improvements. The money held in the Trust Fund will be returned to Developer upon completion of the work.

6. DEVELOPER further agrees that as a condition of and prior to the acceptance by the CITY of the dedication to the public use of said streets and roads contained in Highland Park, it will furnish to the CITY a Surety Bond or an Irrevocable Standby Bank Letter of Credit in the penal sum or amount of not less than Four Hundred Sixty Nine Thousand Three Hundred Fifty Dollars (\$469,350.00) (the "Bond"), guaranteeing the quality of materials and the performance of repairs of all improvements as contained within Highland Park, and further guaranteeing that the materials and the improvements are free from defects for a period of two (2) years following the acceptance of the dedication of streets and roads to the public use by the CITY. In addition, at the same time as DEVELOPER furnishes to the CITY the Bond as



required above, if there is not sufficient money in the Trust Fund to cover the cost of the sidewalks, Developer will deposit Seventy-One Thousand five Hundred Ninety-Five Dollars and Fifty Cents (\$71,595.50) cash with the CITY's Finance Director to guarantee the installation of sidewalks on all sublots (the "Sidewalk Deposit"). If such sidewalks are not installed pursuant to this Agreement, the CITY shall use the Sidewalk Deposit at Eight Dollars and Fifty Cents (\$8.50) per square foot to so install said sidewalks. If said sidewalks are installed by the DEVELOPER, the CITY shall refund Sidewalk Deposit at Eight Dollars and Fifty Cents (\$8.50) per square foot upon completion of each section of sidewalk and the approval of the Chief Building Official, which approval will not be unreasonably withheld, conditioned or delayed. In addition, if there is not sufficient money in the Trust Fund to cover cleaning the Storm Water Management System at the same time as the DEVELOPER furnishes the Bond and Sidewalk Deposit as required above, it will deposit Twenty-Five Thousand Dollars (\$25,000.00) cash with the CITY's Finance Director to guarantee the final cleaning of the Storm Water Management System Facilities (the "Cleaning Deposit"). Said facility will be used by the Developer as a sediment basin throughout the construction of Highland Park and subsequent home construction and will require cleaning/dredging prior to being turned over to the Home Owner's Association. At the time the Bond, Sidewalk Deposit and the Cleaning Deposit are posted, any amounts remaining in the Trust Fund will be returned to DEVELOPER.

7. DEVELOPER further agrees that during the aforesaid two (2) year period, it shall at its sole expense, repair all faults and defects of every kind and nature which arise out of the negligent or willful misconduct of Developer.

8. In addition to the Bond required in Paragraph 6 above, at the time DEVELOPER desires to obtain approval and acceptance by the CITY of the Highland Park improvements, DEVELOPER agrees that it will, as a condition precedent to the said acceptance by the CITY, provide the CITY with the following documents: Certificates or other writings from the Utilities Department of the City of Cleveland in the case of water mains except where the withholding of approval is due solely to the non-performance of

acts required to be performed by CITY; the Cuyahoga County Department of Public Works (Sanitary Division) in the case of sanitary and storm sewer lines; and the Engineer of the CITY, respectively, certifying that said water mains, storm sewer lines, sanitary sewer lines, streets, street connections, all appurtenances thereto and all other improvements as set forth in Paragraph 1 above have been properly installed in accordance with the Improvement Plan and the ordinances of the CITY, and that the construction and installation thereof have been duly completed, inspected and approved by each of the hereinbefore mentioned respective entities.

9. DEVELOPER shall construct and complete all sidewalks in accordance with the terms of this Agreement and Section 1119.09(d) of the CITY's codified ordinances. DEVELOPER shall construct remaining sidewalks within Highland Park or on any street therein in a lesser period than otherwise required by this Agreement in order to assure safe pedestrian travel within Highland Park when determined by the CITY that: A) the construction of homes within Phase Two are completed earlier than two (2) years, or B) eighty percent (80%) of the home construction within Highland Park or on any street thereof is completed. Should the DEVELOPER fail to install the aforementioned sidewalks, the CITY will install the required sidewalk based upon a rate of Eight Dollars and Fifty Cents (\$8.50) per square foot.

10. DEVELOPER will complete the final cleaning/dredging of the Storm Water Management Facilities after eighty percent (80%) of the homes within Highland Park are complete and their yards are established with grass and prior to turning the maintenance responsibility of the Storm Water Management Facilities to the Homeowners Association. Upon completion of this cleaning as deemed acceptable by the CITY all remaining funds shall be returned to the DEVELOPER. If the DEVELOPER fails to complete such task, the City reserves the ability to utilize such funds to clean/dredge the storm water facility or transfer such funds to the Homeowner's Association for their use in completing such task.

11. DEVELOPER, simultaneously with the execution of this Agreement, shall separately deposit with the Finance Director of the CITY the sum of Twelve Thousand Dollars (\$12,000.00) (the

"Expense Fund") to defray the cost of legal, engineering and inspection fees, costs and expenses incurred by the CITY, and the Finance Director is hereby authorized and directed to disburse said sum upon proper billing to the CITY for said services. DEVELOPER acknowledges that the Expense Fund is based upon an estimate and that in the event said sum is insufficient to fully pay all of the aforementioned expenses of the CITY, DEVELOPER shall deposit such additional sums as may be required upon the request of the Finance Director of the CITY. Any unused portion of the Expense Fund shall be refunded to DEVELOPER.

12. DEVELOPER agrees that simultaneously with the execution of this Agreement, and before any work hereunder is commenced, it will submit evidence to the reasonable satisfaction of the Law Director of the CITY, that it, or its contractors, have obtained public liability and property damage insurance covering and insuring the CITY as its interests may appear against liability in the amount of Two Million Dollars (\$2,000,000) for injury or death to any one person, with a minimum aggregate limit of Two Million Dollars (\$2,000,000), and two million dollars (\$2,000,000) for property damage, which insurance shall be furnished and maintained at the expense of the DEVELOPER until all the work agreed to be done by the DEVELOPER has been fully completed and accepted, including the maintenance of the aforementioned improvements agreed by the DEVELOPER to be maintained. DEVELOPER may provide such insurance under a blanket type of insurance provided the CITY is properly named as an additional insured thereunder in accordance with the provisions of this Agreement. DEVELOPER shall be liable for any damages, whether direct or indirect, to any underground or aboveground utilities in Highland Park caused by DEVELOPER or its contractors, subcontractors, agents and/or employees; and further agrees to comply both singularly and on behalf of the CITY with the provisions contained in Section 153.64 of the Ohio Revised Code and any amendments made thereto to the extent said Section shall be applicable.

13. DEVELOPER agrees to comply with the State Law known as the Worker's Compensation Act, and any amendments made thereto, and to cause to be covered thereunder all employees working under the control of the DEVELOPER, or its agents, and the DEVELOPER agrees to defend, indemnify and

hold harmless the CITY and its officers, agents and employees from all claims, demands, payments, loss and expenses, including attorney fees, suits, actions, recoveries and judgments of every kind and description, whether or not well founded in law, made, brought or recovered against it, arising from any cause whatever or for any reason whatever connected with the performance of this Agreement by DEVELOPER or its agents, contractors, subcontractors or employees, including any of the foregoing arising in consequence of insufficient protection or of the use of any patented invention by said DEVELOPER.

14. DEVELOPER agrees that the performance of this Agreement by it shall be solely at its expense and cost, and at no expense or cost, to, or liability or obligation of the CITY.

15. DEVELOPER agrees, if applicable hereunder, to deliver to the CITY a Title Guarantee in the fair market value as determined by the Mayor of the CITY, showing title to private property conveyed to the CITY by dedication, easement, if any, or otherwise to be vested in the CITY free and clear of all material liens and encumbrances, except for taxes and assessments, which are a lien, but not yet due and payable.

16. This Agreement shall be binding upon any successors in interest, assignee, heir, executor, administrator or trustee of DEVELOPER, and DEVELOPER agrees that prior to any voluntary or involuntary assignment of this Agreement, to obtain a written statement forwarded to CITY acknowledging the obligation of any successor in interest to comply with the terms of this Agreement.

17. Prior to the issuance of any building permits within the Highland Park, all street pavements, curbs, sanitary sewer systems, storm drainage systems, water mains, electric lines, gas lines, cable television and phone lines and required appurtenances shall be completed and approved by the City Engineer, provided that the Building Commissioner may issue permits for "Model" home(s) or unit(s) upon his determination that improvements have been installed to the extent he deems necessary to serve and permit occupancy of such home(s) or unit(s); and, except as otherwise provided for model home(s) and unit(s), prior to the issuance of any certificates of occupancy by the CITY, all improvements and utilities must be completed.

**IN WITNESS WHEREOF**, the parties hereto have affixed their signatures upon this Agreement as duly authorized agents, warranting that they are empowered to bind their respective party, on the date first written above.

*[Execution Page Follows]*

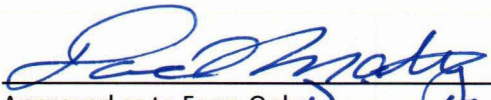

WITNESSES:

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CITY OF BRECKSVILLE, OHIO (AS TO "CITY"):

  
\_\_\_\_\_  
Mayor Daryl J. Kingston

  
\_\_\_\_\_  
Laura Starosta, Finance Director

  
Approved as to Form Only:   
David J. Matty, Director of Law

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

(AS TO "DEVELOPER")  
HARRIS PARK DEVELOPMENT, LLC:

By: \_\_\_\_\_  
Bojan R. Knez

WITNESSES:

CITY OF BRECKSVILLE, OHIO (AS TO "CITY"):

\_\_\_\_\_

\_\_\_\_\_  
Mayor Daryl J. Kingston

\_\_\_\_\_

\_\_\_\_\_

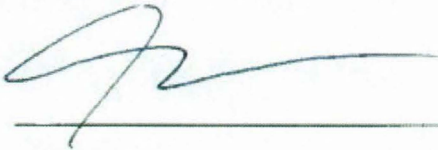
\_\_\_\_\_  
Laura Starosta, Finance Director

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\_\_\_\_\_  
Approved as to Form Only:  
David J. Matty, Director of Law

WITNESSES:

(AS TO "DEVELOPER")  
HARRIS PARK DEVELOPMENT, LLC:

  
\_\_\_\_\_

By:   
Bojan R. Knez



GILLIAN HALL  
Attorney at Law  
NOTARY PUBLIC  
STATE OF OHIO  
My Commission Has  
No Expiration Date  
Section 147.03 O.R.C.

**ESCROW AGREEMENT**

**THIS AGREEMENT**, made and entered into at Cleveland, Ohio this 3 day of September, 2024,  
by and between the City of Brecksville, an Ohio Municipal Corporation, hereinafter referred to as "CITY;"  
and Harris Park Development, LLC, an Ohio Corporation, hereinafter referred to as "DEVELOPER."

**WITNESSETH**

**WHEREAS**, CITY has agreed to hold on deposit and in escrow on behalf of DEVELOPER a credit balance in the initial amount of Thirty Five Thousand Dollars (\$35,000.00) in Private Purpose Trust Fund No. 781, hereinafter referred to as "ACCOUNT,". At the filing of the Plat, it is anticipated that certain work will be incomplete, which is anticipated to cost approximately One Hundred Fifteen Thousand Dollars (\$115,000.00) as set forth in the Subdivision Agreement between CITY and DEVELOPER of even date herewith (the "Subdivision Agreement"). Prior to filing the Plat, CITY and DEVELOPER will verify the incomplete items and adjust the deposit amount accordingly. Said amount will be deposited into the Trust Fund for the purpose of ensuring completion of the Subdivision improvements for Highland Park Residential Subdivision ( "Highland Park"), including constructing and installing storm sewer lines, sanitary sewer lines, the construction and maintenance of storm water storage and detention facilities, water mains and appurtenances thereto, service connections, the grading and construction of deep strength asphalt pavement with reinforced concrete curbs and gutters and appurtenances incident to the street(s) in the Phase Two, clearing, grading and seeding of land, installation of erosion control measures, perimeter drainage control, trench settlement and other settlement abatement, installation of subdivision signage, if required, and landscaping and guaranteeing the maintenance of the aforesaid improvements and completion thereof, in accordance with the Subdivision Agreement;



**WHEREAS**, it is the agreement of the CITY and the DEVELOPER that disbursement of said funds from the ACCOUNT shall be made only upon certification by the Project Engineer, approved by the Engineer of the CITY, as to the cost and reasonable value of the disbursement and progress of the aforesaid improvements to the date of each disbursement. However, in no event prior to the posting of the maintenance bond and sidewalk bond required by the Subdivision Agreement (collectively the "Bonds") and approval by the City Engineer, shall the balance of the ACCOUNT be less than Thirty-Five Thousand Dollars (\$35,000.00).

**NOW, THEREFORE**, in consideration of the foregoing, the CITY and DEVELOPER agree as follows:

1. The disbursement of funds by CITY from the ACCOUNT with respect to the payment of any and all statements for labor and materials in connection with the aforesaid improvements of the Subdivision, and the improvement plans therefor, shall be made only upon receipt by the CITY of payment certificates from the Project Engineer, approved by DEVELOPER and the Engineer of CITY, Donald Bohning & Associates, or its successors in office, that said certificates reflect the reasonable cost and reasonable value of the completion of the development to the date of each disbursement. The Engineer of the CITY agrees to promptly review and approve or disapprove payment certificates within seven (7) days after the same have been submitted to him. Upon receipt of said payment certificate from the Engineer of the City, the CITY shall then make the appropriate disbursement of funds except that the City shall hold Thirty-Five Thousand Dollars (\$35,000.00) of such funds as retainage until the development is completed other than sidewalks, which have their own deposit, and approved by the City Engineer and DEVELOPER has posted the Bonds. Provided, however, that in the event the DEVELOPER does not diligently pursue or does not complete the construction of the required improvements in accordance with the terms and conditions of the Subdivision Agreement and the ordinances of the CITY, unless such time is extended by the CITY upon request of the DEVELOPER for good cause shown, the CITY, upon ten (10) days written notice to the DEVELOPER, shall have the right to complete the installation of the required improvements, as shown on

the approved plans and specifications. The cost to the CITY of installing such improvements shall be paid from the funds of the ACCOUNT to the CITY in the same manner as specified above without the necessity of approvals by the Project Engineer and DEVELOPER. All funds remaining, if any, after satisfaction of all obligations of DEVELOPER to the CITY with respect to the Subdivision shall be promptly returned to DEVELOPER.

2. It is further agreed between CITY and DEVELOPER that DEVELOPER hereby releases the CITY from any and all responsibility, claims or liability of any kind whatsoever which may arise out of the application of funds to CITY upon default of DEVELOPER, except for claims or liability which arise out of the negligent or willful misconduct of Developer, as provided herein. The DEVELOPER, however, shall remain liable for the full amount of the cost of the installation of the required improvements in excess of the funds in the ACCOUNT.

3. This Agreement shall be binding upon any successors in interest, assignee, heir, executor, administrator or trustee of DEVELOPER. Prior to any voluntary or involuntary assignment of this Agreement, DEVELOPER agrees, to obtain a written statement forwarded to CITY acknowledging the obligation of any successor in interest to comply with the terms of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have affixed their signatures upon this Agreement as duly authorized agents, warranting that they are empowered to bind their respective party, on the date first written above.

*[Execution Page Follows]*

WITNESSES:

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CITY OF BRECKSVILLE, OHIO (AS TO "CITY"):




Mayor Daryl J. Kingston



Laura Starosta, Finance Director



Approved as to Form Only:   
David J. Matty, Director of Law

WITNESSES:

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(AS TO "DEVELOPER")  
HARRIS PARK DEVELOPMENT, LLC:

By: \_\_\_\_\_

Bojan R. Knez

WITNESSES:

CITY OF BRECKSVILLE, OHIO (AS TO "CITY"):

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Mayor Daryl J. Kingston

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Laura Starosta, Finance Director

\_\_\_\_\_  
Approved as to Form Only:  
David J. Matty, Director of Law

WITNESSES:

(AS TO "DEVELOPER")  
HARRIS PARK DEVELOPMENT, LLC:

  
\_\_\_\_\_  
\_\_\_\_\_

By:   
Bojan R. Knez



GILLIAN HALL  
Attorney at Law  
NOTARY PUBLIC  
STATE OF OHIO  
My Commission Has  
No Expiration Date  
Section 147.03 O.R.C.

Engineer's Preliminary Opinion of Probable Cost

5/17/2024

Sanitary	Unit	Engineer's Quantity	Unit Cost	Total Cost	Contractor's Quantity	Unit Cost	Total Cost
8" PVC Sanitary	LF	1,171	\$ 70.00	\$ 81,970.00			\$-
48" Sanitary MH	EA	8	\$ 4,800.00	\$ 38,400.00			\$-
Core Existing Manhole	EA	1	\$ 1,500.00	\$ 1,500.00			\$-
4" Sanitary Lateral, Complete	EA	16	\$ 2,500.00	\$ 40,000.00			\$-
Sanitary Sewer Testing	LS	1,171	\$ 2.60	\$ 3,044.80			\$-
<b>Subtotal Sanitary</b>				<b>\$ 169,914.80</b>			<b>\$-</b>

Water	Unit	Engineer's Quantity	Unit Cost	Total Cost	Contractor's Quantity	Unit Cost	Total Cost
8" C909 PVC WM	LF	1,074	\$ 60.00	\$ 64,440.00			\$-
4" C909 PVC WM	LF	377	\$ 45.00	\$ 16,965.00			\$-
8" Hydrant Assembly	EA	5	\$ 6,500.00	\$ 32,500.00			\$-
8" 45 Degree Bends	EA	21	\$ 500.00	\$ 10,500.00			\$-
4" 45 Degree Bends	EA	7	\$ 350.00	\$ 2,450.00			\$-
8" x 8" Tee	EA	1	\$ 800.00	\$ 800.00			\$-
8" x 4" Tee	EA	1	\$ 650.00	\$ 650.00			\$-
8" Line Valve and Box	EA	2	\$ 2,300.00	\$ 4,600.00			\$-
4" Line Valve and Box	EA	1	\$ 2,000.00	\$ 2,000.00			\$-
8"x4" Reducer	EA	1	\$ 600.00	\$ 600.00			\$-
Chlorination Pit	EA	1	\$ 1,000.00	\$ 1,000.00			\$-
1" Water Connection, Complete	EA	16	\$ 2,000.00	\$ 32,000.00			\$-
Pressure Testing	LS	1	\$ 1,000.00	\$ 1,000.00			\$-
<b>Subtotal Water</b>				<b>\$ 169,505.00</b>			<b>\$-</b>

Storm	Unit	Engineer's Quantity	Unit Cost	Total Cost	Contractor's Quantity	Unit Cost	Total Cost
12" HDPE Storm Sewer	LF	1,025	\$ 50.00	\$ 51,250.00			\$-
15" HDPE Storm Sewer	LF	171	\$ 60.00	\$ 10,260.00			\$-
18" HDPE Storm Sewer	LF	171	\$ 70.00	\$ 11,970.00			\$-
24" HDPE Storm Sewer	LF	352	\$ 80.00	\$ 28,160.00			\$-
30" HDPE Storm Sewer	LF	35	\$ 100.00	\$ 3,500.00			\$-
12" RCP Storm Sewer	LF	239	\$ 70.00	\$ 16,730.00			\$-
15" RCP Storm Sewer	LF	42	\$ 90.00	\$ 3,780.00			\$-
30" RCP Storm Sewer	LF	125	\$ 130.00	\$ 16,250.00			\$-
Catch Basin 2-2B	EA	5	\$ 1,500.00	\$ 7,500.00			\$-
Catch Basin Inlet No. 3A	EA	10	\$ 2,200.00	\$ 22,000.00			\$-
48" Manhole	EA	8	\$ 3,200.00	\$ 25,600.00			\$-
Modified Catch Basin 2-3 (Pond Outlet Structure)	EA	1	\$ 4,000.00	\$ 4,000.00			\$-
Full-Height Headwall	EA	5	\$ 2,000.00	\$ 10,000.00			\$-
6" Storm Connection, Complete	EA	16	\$ 1,500.00	\$ 24,000.00			\$-
<b>Subtotal Storm</b>				<b>\$ 235,000.00</b>			<b>\$-</b>

### Engineer's Preliminary Opinion of Probable Cost

5/17/2024

Pavement	Unit	Engineer's Quantity	Unit Cost	Total Cost	Contractor's Quantity	Unit Cost	Total Cost
Subgrade Preparation (1' Outside Pvmnt)	SY	4,130	1	\$ 4,130.00			\$-
1.25" Item 448 - Surface Course, Type 1	CY	137	\$ 200.00	\$ 27,400.00			\$-
1.75" Item 448 - Intermediate Course, Type 2	CY	192	\$ 175.00	\$ 33,600.00			\$-
6" Item 301 - Bituminous Aggregate Base	CY	666	\$ 45.00	\$ 29,520.00			\$-
6" Item 304 - Limestone Subbase	CY	666	\$ 50.00	\$ 32,800.00			\$-
6" Underdrain	LF	2,462	\$ 10.00	\$ 24,520.00			\$-
Open Space 5' Sidewalk	SF	4,002	\$ 6.00	\$ 24,012.00			\$-
5' Concrete Sidewalk	SF	8,423	\$ 6.00	\$ 60,538.00			\$-
ADA Curb Ramp	EA	6	\$ 500.00	\$ 3,000.00			\$-
Monuments	EA	7	\$ 500.00	\$ 3,500.00			\$-
<b>Subtotal Pavement</b>				\$ 233,020.00			\$

Earthwork	Unit	Engineer's Quantity	Unit Cost	Total Cost	Contractor's Quantity	Unit Cost	Total Cost
Excavation	CY	4,500	\$ 5.00	\$ 22,500.00			\$-
Embankment	CY	7,900	\$ 4.00	\$ 31,600.00			\$-
Strip Topsoil (8" average across site)	CY	4,500	\$ 3.00	\$ 13,500.00			\$-
On-Site Clay Borrow	CY	1,400	\$ 3.00	\$ 4,200.00			\$-
Pipe Spoil Embankment	CY	2,000	\$ 8.00	\$ 16,000.00			\$-
Respread Topsoil	CY	1,100	\$ 1.50	\$ 1,650.00			\$-
Mound Remaining Topsoil	CY	2,000	\$ 2.50	\$ 5,000.00			\$-
Regrade R/W after Pavement	LF	2,264	\$ 2.50	\$ 5,660.00			\$-
Regrade R/W after Utility Installation	LF	2,264	\$ 2.50	\$ 5,660.00			\$-
<b>Subtotal Earthwork</b>				\$ 105,770.00			\$

Erosion Control	Unit	Engineer's Quantity	Unit Cost	Total Cost	Contractor's Quantity	Unit Cost	Total Cost
Silt Fence	LF	1,206	\$ 3.00	\$ 3,618.00			\$-
Orange Construction Fence	LF	988	\$ 3.50	\$ 3,458.00			\$-
Concrete Washout	EA	1	\$ 500.00	\$ 500.00			\$-
Emergency Spillway EC Matting	SY	18	\$ 250.00	\$ 4,500.00			\$-
Inlet Protection	EA	15	\$ 250.00	\$ 3,750.00			\$-
Seeding	SY	31,350	\$ 0.60	\$ 18,810.00			\$-
Rock Channel Protection	CY	10	\$ 200.00	\$ 2,000.00			\$-
Construction Entrance	EA	1	\$ 5,000.00	\$ 5,000.00			\$-
Temporary Skimmer	EA	1	\$ 2,500.00	\$ 2,500.00			\$-
Maintenance of Erosion Control Items	LS	1	\$ 5,000.00	\$ 5,000.00			\$-
<b>Subtotal Erosion Control</b>				\$ 49,136.00			\$

Engineer's Preliminary Opinion of Probable Cost

5/17/2024

Miscellaneous	Unit	Engineer's Quantity	Unit Cost	Total Cost	Contractor's Quantity	Unit Cost	Total Cost
Trenching for Dry Utilities	LF	2,450	\$ 12.00	\$ 29,400.00			\$ -
Subtotal Miscellaneous				\$ 29,400.00			\$ -

Demolition	Unit	Engineer's Quantity	Unit Cost	Total Cost	Contractor's Quantity	Unit Cost	Total Cost
Site Demolition	LS	1	770,000	\$ 770,000.00			\$ -
Subtotal Miscellaneous				\$ 770,000.00			\$ -

Project Total = \$ 1,788,745.80

Misc Testing of S. & Inspection = \$ 5,000.00  
 1.25" surface course = \$ 27,400.00  
 open space & Highland Drive sidewalk = \$ 38,845.00  
 4570 x \$ 8.50  
 Masonry = \$ 3550.00  
 Dry utility trenching = \$ 29,400.00  
 Regrade B/W area utility trenching = \$ 5,660.00  
 Final seeding & Restoration = \$ 15,000.00  
 Entry landscaping = \$ 10,000.00

Total = \$ 134,805.00  
 10% contingency = \$ 13,480.50  
 Total ± \$ 150,000.00



8/30/2024

Itemization of Outstanding Work  
 Exhibit C

\$ 1,756,745.60  
 Less sublot s.w. \$ - 50,000.00  
 10% contingency \$ 170,674.56  
 Total \$ 1,877,420.16  
 Use \$ 1,877,400.00  
 25% \$ 469,350

**ORDINANCE RECORD**  
**COUNCIL OF THE CITY OF BRECKSVILLE**

Ordinance No. 5732

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER  
INTO AN LPA FEDERAL LOCAL-LET PROJECT AGREEMENT  
FOR THE CUY-SR 021-02.93 BRECKSVILLE ROAD REPAVING  
PROJECT PHASE 2 AND DECLARING AN EMERGENCY**

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Brecksville, County of Cuyahoga, and State of Ohio, that:


**SECTION 1.** The Mayor be, and he hereby is, authorized to enter into an LPA FEDERAL LOCAL-LET PROJECT AGREEMENT for the CUY-SR 021-02.93 Brecksville Road Repaving Project Phase 2, a copy of which LPA FEDERAL LOCAL-LET PROJECT AGREEMENT is attached hereto as Exhibit "A" and incorporated herein as if by reference.

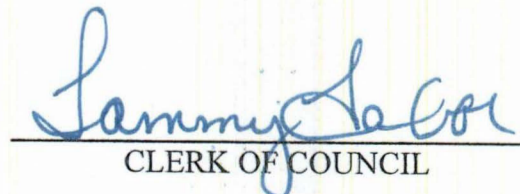
**SECTION 2.** The Council hereby appropriates sufficient funds to effectuate the provisions contained in Section 1 hereof, and the Director of Finance is hereby authorized to transfer the funds necessary to complete this expenditure from the available funds of the City. The Director of Finance be and is hereby further authorized to issue the fiscal officer's certificate necessary to make the expenditures as described in Section 1 hereof, and is further directed to issue vouchers of this City in the amounts and for the purposes as expressed in Section 1 hereof, said amounts to be charged to the appropriately designated Fund.

**SECTION 3.** The Council declares this Ordinance to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, the reason for the emergency is the need to commence the project, therefore, said Ordinance shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise, from and after the earliest period allowed by law.

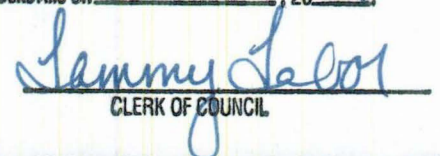
PASSED: September 3, 2024

APPROVED: September 3, 2024

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CLERK OF COUNCIL

I do hereby certify that the foregoing is a true and correct copy of Ordinance No. 5732 duly passed by the Council of the City of Brecksville, Ohio, on 9.3, 20 24 and that same was duly posted in accordance with the existing Charter of the City of Brecksville on 9.4, 20 24.

  
\_\_\_\_\_  
CLERK OF COUNCIL



## EXHIBIT "A"

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 Brecksville, Ohio** hereinafter referred to as the LPA, **9069 Brecksville Rd., Brecksville, Ohio 44141.**

#### 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 **CUY-SR 021-02.93 (PID 110610)**- (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 **\$2,923,333.00** as set forth in Attachment 1. ODOT shall provide to the LPA **90** percent of the eligible costs, up to a maximum of **\$2,430,000.00** which includes Federal (4PF7) funds and **10** percent State (4PS7) 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](http://www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT).
- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

## 5. ENVIRONMENTAL RESPONSIBILITIES

- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act (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:

<b>Daryl J. Kingston, Mayor and Safety Director</b>
<b>City of Brecksville</b>
<b>9069 Brecksville Rd.</b>
<b>Brecksville, Ohio 44141</b>

- 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:

<b>Daryl J. Kingston, Mayor and Safety Director</b>	<b>John Picuri, District 12 Deputy Director</b>
<b>City of Brecksville</b>	<b>Ohio Department of Transportation</b>
<b>9069 Brecksville Rd.</b>	<b>5500 Transportation Blvd.</b>
<b>Brecksville, Ohio 44141</b>	<b>Garfield Heights, Ohio 44125</b>
<a href="mailto:mayorkingston@brecksville.oh.us">mayorkingston@brecksville.oh.us</a>	<a href="mailto:John.Picuri@dot.ohio.gov">John.Picuri@dot.ohio.gov</a>

15. GENERAL PROVISIONS

15.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs:*

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below: [*LPA official must initial the option selected.*]



**1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.**

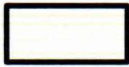
- (A) The LPA **does not** currently maintain an ODOT approved Federally compliant time-tracking system<sup>1</sup>, **and**
- (B) The LPA **does not** intend to have a Federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
- (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.

<sup>1</sup> 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.



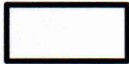
**2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.<sup>2</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, *and*
- (B) The LPA *does not* currently have, and *does not* intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



**3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.<sup>3</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, *and*
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



**4. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.<sup>4</sup>**

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, *and*
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, *and*
- (C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe

<sup>2</sup> [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.

<sup>3</sup> [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.

<sup>4</sup> [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 LAMP 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: <b>Brecksville, Ohio</b>	<b>STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION</b>
By: 	By:
Title: <b>DARYL J. KINGSTON</b>	Jack Marchbanks Director
Date: <b>9/3/24</b>	Date:



**Attachment 1**

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

USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT										
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS										
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION										
PROJECT CONSTRUCTION COSTS										
INSPECTION										
TOTALS	\$270,000.00 \$216,000.00	10 100	LNT LNT	\$2,160,000.00	80	4PF7	\$270,000.00 \$7,333.00	10 100	4PS7 4PS7	\$2,923,333.00

## Attachment 2

### DIRECT PAYMENT OF CONTRACTOR

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's contractor shall be paid directly to the contractor in the pro-rata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this Agreement and shall indicate that the payment is to be made to the contractor. In addition, the invoice must state the contractor's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the contractor, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (sub recipient). Accordingly, the LPA is responsible for tracking the receipts and payments and reporting the payments Federal (Receipts) Expenditures on the Schedule of Expenditures of Federal Awards (SEFA). An LPA that fails to report these funds accurately and timely may be required to restate the SEFA to comply with Federal reporting requirements.

We (INSERT NAME OF LPA) request that all payments for the Federal/State share of the construction costs of this Agreement performed by (CONTRACTOR'S NAME) be paid directly to (CONTRACTOR'S NAME).

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

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