



**CITY COUNCIL MEETING AGENDA (in person and on Youtube)**

**7:00PM**

**MONDAY, OCTOBER 4, 2021**

**LOCATION:**  
**City Meeting Room**  
**(former Wiley Middle School Library**  
**next door to Board of Education)**  
**2181 Miramar Blvd.**  
**University Heights, Ohio**

**Per current CDC guidelines, the City asks that all participants and attendees wear masks or face coverings, even if fully vaccinated.**

---

NOTE: Executive Session may follow meeting to discuss legal, personnel and real estate matters.  
(Motion Required)

---

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Approval of Minutes
5. Comments from the Audience (Speakers are limited to 5 minutes, total time allowed 15 min. per meeting, unless otherwise permitted by Council. Ord. 91-25)
6. Reports and Communication from the Mayor and the taking of action
7. Agenda Items:
  - A. Ordinance 2021-38 Creating a Pilot Program for the Use of Electronic Scooters on City Streets and Authorizing the Mayor to Enter into a Memorandum of Understanding with Cuyahoga County, Ohio Establishing Certain Rights and Responsibilities for the Electronic Scooter Pilot Program, and Declaring an Emergency (on emergency)
  - B. Ordinance 2021-39 Amending Codified Ordinance Section 220.09 Entitled "Clerk of Council/Assistant Clerk of Council" (on first reading)
  - C. Ordinance 2021-40 Authorizing the Mayor to Enter into Contract for Public Health Services with The Cuyahoga County Board of Health for January 1, 2022 to December 31, 2023 and Declaring an Emergency (on emergency)
  - D. Ordinance 2021-41 Resurfacing and Improvement of Pedestrian Crossings on Cedar Road (CR-23) from South Taylor Road to South Green Road (suspending and resuming work at concrete section from Fenwick Road to Miramar Boulevard) in the Cities of University Heights and South Euclid (on emergency)
  - E. Motion Authorizing the Mayor to Enter into Agreement with ODOT for the Resurfacing and Improvement of Pedestrian Crossings on Cedar Road (CR-23) from South Taylor Road to South Green Road (suspending and resuming work at concrete section from Fenwick Road to Miramar Boulevard) in the Cities of University Heights and South Euclid (PID 112495, CUY-Cedar Road)

- F. Ordinance 2021-42 Enacting Codified Ordinance Section 618.021 Entitled “Tethering Animals,” and Enacting Codified Ordinance Section 618.022 Entitled “Confinement,” and Declaring an Emergency (on first reading)
- G. Motion Authorizing Mayor to Accept Price Quote from Starfish Computer Corp. for Emergency Support and Service for 10/01/2021 – 12/31/2021 in an amount not to exceed \$16,650.00
- H. Motion Authorizing Housing Director to seek Grant Funding for Bump outs and Crosswalks located at Hillbrook and Traymore Road along Warrensville Center Road up to \$300,000.00
- I. Motion Declaring 3910 Faversham Road a Public Nuisance
- J. Motion to Enter Executive Session for the purpose of Discussing Legal Proceedings, Personnel and Real Estate Matters

Directors Reports:

- a) Finance
- b) Law
- c) Public Safety (Police/Fire)
- d) Service
- e) Building
- f) Housing and Community Development
- g) City Engineer
- h) Communications / Civic Engagement
- I) Economic Development

- 8. Adjournment

**AGENDA**

**MONDAY, OCTOBER 4, 2021**  
**REPORTS FROM STANDING COMMITTEES**

**BUILDING/HOUSING**

Chairman  
Barbara Blankfeld

**COMMUNITY OUTREACH**

Chairman  
Susan Pardee

**ECONOMIC DEVELOPMENT**

Chairman  
John Rach

**FINANCE**

Chairman  
Michele Weiss

**RECREATION**

Chairman  
Phillip Ertel

**SAFETY**

Chairman  
Saundra Berry

**SERVICE AND UTILITIES**

Chairman  
Justin Gould

**COMMITTEE OF THE WHOLE**

Vice Mayor Michele Weiss

**ORDINANCE 2021-38**

**INTRODUCED BY: MAYOR MICHAEL DYLAN BRENNAN AND ALL OF COUNCIL**

**AN ORDINANCE CREATING A PILOT PROGRAM FOR THE USE OF ELECTRONIC SCOOTERS ON CITY STREETS AND AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH CUYAHOGA COUNTY, OHIO ESTABLISHING CERTAIN RIGHTS AND RESPONSIBILITIES FOR THE ELECTRONIC SCOOTER PILOT PROGRAM, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City wishes to create a pilot program for the use of electronic scooters within the City; and

**WHEREAS**, the City wishes to promote multi-modal means of transportation throughout the City, and to balance the utility and convenience of electronic scooters with a desire to keep City streets and sidewalks safe and uncluttered; and

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of University Heights, State of Ohio:

**Section 1.** City Council hereby creates a Pilot Program for use of Electronic Scooters and/or Shared Mobility Devices, as such terms are hereafter defined, on City streets, pursuant to the Electronic Scooter Pilot Program Guidelines adopted herein.

**Section 2.** For purposes of this ordinance, Council establishes the following definitions.

“Electronic Scooter” or “E-Scooter” means a two-wheeled device that has handlebars, a floor board, designed to be stood upon when operating and is powered by electricity. Some devices of this type are equipped with a seat, but none has operable pedals. The electricity is stored on board in a rechargeable battery.

“Shared Mobility Device” means small mobility devices, such as an E-Scooter, e-bike or other similar device. A Mobility Device does not include those designed solely for use by a child, those used as assistive mobility devices by persons with disabilities, or those defined as an electric personal assistive mobility device.

“Shared Mobility Device Vendor” means an entity approved to use/occupy the right-of-way for offering shared mobility devices, such as an Electronic Scooter, E-Scooter, e-bike, or any other Mobility Device, to subscribers on a fee basis subscription for short-term rental in point-to-point trips.

**Section 3.** Council hereby authorizes the Mayor to enter into a Memorandum of Understanding with Cuyahoga County, Ohio establishing certain rights and responsibilities of the parties in connection with the Electronic Scooter Pilot Program, a copy of which is attached hereto as Exhibit A, and which is incorporated herein by reference as if fully rewritten.

**Section 4.** The City hereby establishes Electronic Scooter Rebalancing Stations (each a “Rebalancing Station”) throughout the City, at locations designated on a certain Rebalancing Station Map, a copy of which is attached hereto as Exhibit B and which is incorporated herein by reference as if fully reproduced.

**Section 5.** The City hereby licenses five (5) Electronic Scooters per Shared Mobility Device Vendor during the pendency of the Electronic Scooter Pilot Program.

**Section 6.** Each Shared Mobility Device Vendor shall be obligated to (i) provide the City Police Department with a contact person who can be reached during normal hours of operation as established hereunder; (ii) to cause any Electronic Scooter, E-Scooter or Shared Mobility Device to be returned to a designated Rebalancing Station

within three (3) hours of the termination of the use of such Electronic Scooter, E-Scooter or Shared Mobility Device (hereafter referred to, either collectively or individually, as an “Electronic Scooter”); and (iii) comply with all Electronic Scooter Pilot Program rules or guidelines established in this ordinance.

**Section 7.** Any Electronic Scooter may be operated within the City from 7:00 AM to 7:00 PM, and each Shared Mobility Device Vendor shall be obligated to program the City’s designated Electronic Scooters to comply with these time restrictions.

**Section 8.** Electronic Scooters may be operated only on the following designated streets: Cedar Road, Fairmount Boulevard, South Taylor Road, South Green Road, Warrensville Center Road, and Meadowbrook Boulevard. Cuyahoga County shall install geo-fencing to reasonably enforce these geographic restrictions.

**Section 9.** Electronic Scooters operable within the City shall not exceed a speed limit of Fifteen Miles Per Hour (15 mph).

**Section 10.** No person who is under the age of sixteen (16) shall operate an Electronic Scooter within the City. No parent of any child or guardian of any ward shall authorize or knowingly permit any such child or ward to violate the age restrictions established in this section.

**Section 11.** A person exerting control of or operating an Electronic Scooter shall be permitted to stand or park it on a sidewalk, without charge or restriction, provided that the Electronic Scooter does not impede the normal flow of pedestrian traffic or otherwise prevent use of the sidewalk, including, but not limited to, use of the sidewalk by any person utilizing a wheelchair or assistive motorized device. Under no circumstances shall any person exerting control over or operating an Electronic Scooter park or leave such Electronic Scooter on private property.

**Section 12.** Any Electronic Scooter shall be considered a Motor Vehicle as defined in Codified Ordinance Section 402.22 and, accordingly, shall be subject to the ordinances set forth in the City’s Codified Ordinance Chapter 432 relating to the operation of a motor vehicle.

**Section 13.** No operator of an Electronic Scooter shall do any of the following: (i) allow passengers while the Electronic Scooter is in operation or motion; or (ii) structurally alter the Electronic Scooter from the original manufacturer’s design.

**Section 14.** In addition to any regulations set forth in Codified Ordinance Chapter 432, the following rules shall apply to the operation of any Electronic Scooter within the City:

- Electronic Scooters shall not be operated on any sidewalk.
- Joyriding or use of any Electronic Scooter in any parking lot is prohibited.
- Every person operating an Electronic Scooter shall obey the instructions of official traffic control devices and signals applicable to vehicles, unless otherwise directed by a police officer.
- No person operating an Electronic Scooter shall carry any package, bundle or article that prevent the operator from safely operating the Electronic Scooter.
- Every person operating an Electronic Scooter upon a roadway shall ride as near to the right side of the roadway as practicable obeying all traffic rules applicable to motor vehicles and exercising due care when passing a standing vehicle or one proceeding in the same direction.
- Whenever authorized signs are erected indicating that no right, left or “U” turn is permitted, no person operating an Electronic Scooter shall disobey the direction of any such sign, except when such person dismounts from the Electronic Scooter, in which event such person shall then obey the regulations applicable to pedestrians.

**Section 15.** In the event that any of the terms or provisions of this ordinance conflict with the terms and provisions set forth in Codified Ordinance Chapter 432, the terms and provisions of this ordinance shall be controlling.

**Section 16.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

**Section 17.** This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, the emergency being the need to enact these regulations in a time frame that allows the City to implement the Electronic Scooter Pilot Program during October of 2021, so that the City can learn of the effectiveness of these regulations and seek to legislatively address any issues that arise during the Pilot Program before the Spring of 2022; wherefore, this ordinance shall be in full force and effect from and immediately after its adoption and approval by the Mayor. This ordinance shall take effect from and after the earliest time allowed by law.

**CITY OF UNIVERSITY HEIGHTS, OHIO**

\_\_\_\_\_  
**MICHAEL DYLAN BRENNAN, MAYOR**

**PASSED:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**KELLY M. THOMAS, CLERK OF COUNCIL**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**LUKE F. MCCONVILLE, LAW DIRECTOR**

**ORDINANCE 2021-39**

**INTRODUCED BY: COUNCILWOMAN WEISS**

**AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 220.09 ENTITLED “CLERK OF COUNCIL/ASSISTANT CLERK OF COUNCIL.”**

**WHEREAS**, the Clerk of Council routinely performs administrative tasks on behalf of the City and at the request of the Mayor as part of her day-to-day job duties and for purposes of the smooth day-to-day operations of the City; and

**WHEREAS**, the City wishes to codify its delegation of certain management responsibilities to the Mayor in connection with the job duties of the Clerk of Council; and

**WHEREAS**, the City wishes to require an annual performance review for the Clerk of Council; and

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of University Heights, State of Ohio:

**Section 1.** This Council hereby amends Codified Ordinance Section 220.09 entitled “Clerk of Council/Assistant Clerk of Council”, which shall read in its entirety as follows:

**220.09 CLERK OF COUNCIL/ASSISTANT CLERK OF COUNCIL**

- (a) Council shall appoint a Clerk who shall have such powers and duties as are set forth in Article 3, Section 4 of the Charter as well as such other duties and functions as may be required from time to time by ordinance, resolution or motion of Council.
- (b) Council may appoint a part-time Assistant Clerk at a rate of pay established by Ordinance, who shall work under the direct supervision of the Clerk and shall perform such duties as directed by the Clerk.
- (c) The Clerk shall assist the Mayor in the performance of administrative duties at the direction of the Mayor, as reasonably necessary, provided that such assistance does not interfere with the Clerk’s ability to perform the duties of the Clerk set forth in Article 3, Section 4 of the Charter.
- (d) The Mayor shall have the authority to implement discipline of the Clerk of Council in connection with the performance by the Clerk of administrative duties, up to and including a two-day suspension from employment. Any disciplinary action greater than a two-day suspension, including termination of employment, shall be reserved to Council. Nothing herein shall be construed to limit Council’s authority to implement discipline of the Clerk of Council in connection with the performance of the Clerk’s job duties.
- (e) Council shall conduct an annual performance review of the Clerk of Council, which shall take place prior to the end of each calendar year. Upon request of Council, the Mayor shall be obligated to attend and/or materially participate in conducting any such performance review.

**Section 2.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

**CITY OF UNIVERSITY HEIGHTS, OHIO**

\_\_\_\_\_  
**MICHAEL DYLAN BRENNAN, MAYOR**

**PASSED:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**KELLY M. THOMAS, CLERK OF COUNCIL**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**LUKE F. MCCONVILLE, LAW DIRECTOR**



**ORDINANCE NO. 2021-40**

**INTRODUCED BY: MAYOR MICHAEL DYLAN BRENNAN**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO CONTRACT FOR PUBLIC HEALTH SERVICES WITH THE CUYAHOGA COUNTY BOARD OF HEALTH AND DECLARING AN EMERGENCY.  
(City with a General Health District - Authority--Sec.3709.08 O.R.C.)**

**NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF UNIVERSITY HEIGHTS, OHIO THAT:**

**WHEREAS**, the District Advisory Council of the Cuyahoga County General Health District, created by ORC 3709.03, after giving due notice by publication as required by law, held a public meeting on March 9, 2021, at which by a majority vote of members representing the townships and villages of said county, did vote affirmatively on the question of providing public health services to the cities in Cuyahoga County, and did authorize the Chairman of the District Advisory Council to enter into an Agreement with the Mayor of the City for providing public health services therein; and

**WHEREAS**, the Council of the **City of University Heights**, at a Council meeting held on October 4, 2021, by majority vote of all members did vote affirmatively on the question of contracting with the District Advisory Council of the Cuyahoga County General Health District for providing public health services to the **City of University Heights** and did authorize the Mayor to enter into a contract with the Chairman of the District Advisory Council of the Cuyahoga County General Health District to provide public health services.

**NOW, THEREFORE**, pursuant to such authority, Mayor David Smith on behalf of the District Advisory Council of the Cuyahoga County General Health District and Michael Dylan Brennan on behalf of the **City of University Heights** do agree as follows:

**Section 1:** The General Health District of Cuyahoga County, Ohio, hereby agrees to provide health services for the **City of University Heights** for the calendar year 2022: **January 1, 2021 through December 31, 2023**. Per Public Health Services Agreement, Exhibit A – Scope of Work will include all necessary medical, nursing, sanitary, laboratory and such other health services as are required by the Statutes of the State of Ohio. Air pollution enforcement services, as described in Chapter 3704 of the Ohio Revised Code (“ORC”), will be conducted through the designated agent, the Cleveland Division of Air Pollution Control, not by the Board. This authorization is contingent upon renewal of the Agreement between the Ohio EPA and the City of Cleveland and satisfactory performance of the Agreement terms and conditions regarding air pollution control in Cuyahoga County. The Board of Health reserves the right to alter, modify or amend this Agreement provision with notice to the City.

**Section 2:** In consideration for the health services described in Exhibit A, which will be provided by the Board to and within the City, the City shall pay to the Board the total **annual sum of Seventy-Three Thousand Seven Hundred Eighty-Eight Dollars (\$73,788.00) for calendar year 2021**. The City hereby directs the Fiscal Officer of Cuyahoga County to place to the credit of the Board and the Fiscal Office of Cuyahoga County is hereby authorized and directed to deduct the sum stated above in equal, **semi-annual installments of Thirty-Six Thousand Eight Hundred Ninety-Four Dollars (\$36,894.00)** from the regular property tax settlement to be made for said City for calendar year 2021.

**Section 3:** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance of all legal requirements.

**Section 4.** This Ordinance constitutes an emergency measure for the immediate preservation of public peace, health and safety of the citizens of the City of University Heights, and provided it receives the affirmative vote of not less than five (5) members of Council, it shall take effect immediately upon its passage and approval of the Mayor, otherwise, it shall become effective at the earliest time allowed by law.

**CITY OF UNIVERSITY HEIGHTS, OHIO**

\_\_\_\_\_  
**MICHAEL DYLAN BRENNAN, MAYOR**

**FIRST READING:** \_\_\_\_\_

**PASSED:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**KELLY M. THOMAS, CLERK OF COUNCIL**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**LUKE F. MCCONVILLE, LAW DIRECTOR**



- 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 Subtitle I, Chapter 11, Sections 1101-1104, the "Brooks Act." – "Selection of Architects and Engineers"
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 153.65 through 153.71
- ORC 5501.03(D)
- OAC 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
- State of Ohio Department of Transportation Construction and Material Specifications Manual
- State of Ohio Department of Transportation Construction Administration 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.

3. FUNDING AND PAYMENT

3.1 The total cost for the PROJECT is estimated to be \$ 1,870,446.32 as set forth in Attachment 1.

ODOT shall provide to the LPA 80 percent of the eligible costs, up to a maximum of \$ 1,433,974 in Federal (4TA7) 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 transportation project improvements and construction engineering/inspection activities.

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

3.3 All funding from ODOT under this Agreement operates on a reimbursement basis. The LPA shall review and/or approve all contractor invoices for materials, equipment and labor prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.

3.4 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 reimbursement of the 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 on a daily basis as the items of work are completed and accepted.

3.5 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. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.

3.6 The LPA shall certify in writing that the PROJECT was developed and delivered in compliance with the terms, conditions and requirements of the PROJECT Agreement with his/her Professional Engineer's seal and signature. The LPA shall then provide the final report to the ODOT District within 6 months of the physical completion date of the PROJECT so that the report may be audited and approved for payment. If the deadline cannot be met, a written explanation must be provided to the District prior to the end of the 6 months documenting the reason and the new anticipated date of completion. If the extended deadline is not met, then this process must be repeated until the PROJECT is completed. Failure to follow this process may result in the immediate close-out of the PROJECT and loss of further funding.

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

<b>City of University Heights</b>
<b>2300 Warrensville Center Road</b>
<b>University Heights, Ohio 44118</b>

4. PROJECT DEVELOPMENT

4.1 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.

4.2 Project Development shall follow ODOT's Project Development Process and all ODOT standards for environmental evaluations, design, plan preparation, right of way acquisition, utility relocation and other processes as set out in the Department's Design Reference Resource Center, available on ODOT's website ([www.dot.state.oh.us/drrc/Pages/default.aspx](http://www.dot.state.oh.us/drrc/Pages/default.aspx)). Responsibilities for development of the PROJECT shall be as follows and further described herein:

**LPA ODOT Let Project Responsibility Assignments**

PDP Phase	Activity	Responsibility		Commentary
		LPA	ODOT	
Planning	All	X		ODOT to provide coordination as needed
Preliminary Engineering	All	X		ODOT to: 1) Provide coordination as needed 2) Review all plans and documents and provide comments
Environmental Engineering	Stage 1 Plans	X		ODOT to review all plans and documents and provide comments.

	Stage 2 Plans	X		ODOT to review all plans and documents and provide comments.
	Value Engineering		X	ODOT will coordinate Value Engineering if required. Refer to Section 4.7.
	Cost Estimates	X		LPA/Consultant shall prepare in Estimator format.
	NEPA	X		ODOT will coordinate NEPA approval. Refer to Section 4.7 for Environmental Responsibilities.
	Permits		X	ODOT will obtain permits needed to construct the PROJECT.
	R/W Plans	X		ODOT to review all plans and documents and provide comments.
	Public/Stakeholder Involvement	X		ODOT to review all PI plans and materials and provide comments.
Final Engineering & R/W	R/W Acquisition & Relocation	X		Refer to Section 6 for detailed requirements.
	Utility Relocation	X		Refer to Section 6.6 for additional details.
	Railroad Coordination and Agreements		X	Refer to Section 6.8 for additional details.
	Stage 3 Plans	X		ODOT to review all plans and documents and provide comments.
	Cost Estimates	X		LPA shall prepare in Estimator format.
	Final Plan Package	X		ODOT to review all plans and documents and provide comments.
	Mitigation		X	ODOT will coordinate any required mitigation efforts.
	Public/Stakeholder Involvement	X		ODOT to review all PI plans and materials and provide comments.

Construction	Advertise		X	LPA and consultants to assist in responding to bidder questions and preparation of any addenda.
	Award		X	ODOT Awards Committee
	Administer Construction Contract		X	ODOT will administer the construction contract. The LPA and LPA's consultants shall respond promptly to requests for information or other construction issues.
	Public/Stakeholder Involvement	X	X	ODOT to coordinate in cooperation with the LPA.
All Phases	Federal Authorizations		X	ODOT will coordinate and obtain all needed FHWA Authorizations and notify the LPA upon approval.
All Phases	Encumbrance of Funds		X	ODOT will encumber funds in accordance with this Agreement.

4.3 The LPA shall designate an LPA employee to act as the LPA Project Manager and act as the point of contact for all communications with ODOT.

4.4 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.

4.5 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.

4.6 Environmental Responsibilities

- A. In the administration of this PROJECT, the Permittee shall be responsible for conducting any required public involvement activities, 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 and related regulations, including the requirements of the National Historic Preservation Act.
- B. If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire a consultant in accordance with Section 5.
- C. 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.
- D. Whichever party obtains the Project's environmental clearance or permits shall be responsible for assuring compliance with all commitments made as part of such clearance or permit requirements during the construction of the PROJECT.

- E. The LPA shall require its consultant to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act.
- F. The LPA shall require its consultant to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- G. The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required from the Ohio EPA.

#### 4.7 Use of ODOT Consultant Agreements

- A. ODOT may provide services through ODOT held consultant agreements at its discretion subject to funding participation by the LPA. Agreements that may be available for use include the following:
  1. If the LPA chooses to utilize the CEAO task order contract for environmental services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any acquisition authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.
  2. If the LPA chooses to utilize the CEAO task order contract for right-of-way acquisition services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any acquisition authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.
  3. Value Engineering. If Value Engineering is required, the Department may elect to use an ODOT held agreement to assist in administering the Value Engineering process. If Value Engineering is required, the LPA shall require its consultants to participate as needed.

### 5. CONSULTANT SELECTION AND ADMINISTRATION

#### 5.1 General Requirements

- A. The LPA must select a consultant/ consultant team that is prequalified by ODOT for all services to be performed by the consultant and subconsultants.
- B. The LPA must incorporate ODOT's "Specifications for Consulting Services – 2016 Edition" as a contract document in all of its consultant contracts.



- C. The LPA must require, as a scope of services clause, that project development follow ODOT's Project Development Process, and that all documents and plans prepared by the consultant must conform to ODOT's current standards, including the electronic deliverable requirements of ODOT's CADD Engineering Standards Manual, and Location and Design Manual Volume 3, Section 1500.
- D. The LPA consultant agreement must provide for ongoing consultant involvement during the construction phase of the Project.
- E. The LPA consultant agreement must include a completion schedule acceptable to ODOT.
- F. The LPA must assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.
- G. The LPA must cooperate with ODOT in directing additional or corrective work, and to recover damages due to errors or omissions.
- H. If Federal Funds are used to pay the cost of any contract for professional services, the LPA must comply with 23 CFR 172, Sections 153.65 through 153.71 of the Ohio Revised Code and Section 5.2 below in the selection of consultants, and administer consultant agreements in accordance with ODOT's Manual for Administration of Contracts for Professional Services. Professional services, as defined in Sections 5526.01 and 153.65(C) of the Ohio Revised Code, include the practice of engineering (including inspection of construction), the practice of surveying, the practice of architecture including landscape architecture, evaluation of environmental impacts, right-of-way acquisition services and administration of construction contract claims.

5.2 Procedures for LPA Selection of Consultants for Agreements that Include Federal Funds in Preliminary Engineering

A. Policies in Selection of Consultants

1. Restrictions Concerning LPA Preferences

The LPA **shall not** offer direction to consultants concerning preferences (or informal sanctions) for certain subconsultants or team arrangements. These arrangements are business decisions that must be made by consultants without direction from the LPA. The LPA must make selection decisions on the basis of proposed teams without advance "steering" of teams.

2. Communications Restrictions

Please note the following policy concerning communication between Consultants and the LPA during the announcement and selection process:

During the time period between advertisement and the announcement of final consultant selections for the Programmatic Selection Process, communication with consultants (or their agents) shall be limited as follows:

a. Communications which are strictly prohibited:

- (1) Communication with the LPA: Any marketing or similar discussions of the specific project if the consultant has submitted or plans to submit a letter of interest, or is included as a subconsultant on a submittal by another firm.

- b. Allowable communications include:
  - (1) Project administration activities for authorized agreements, scope and negotiation activities for projects selected but not under contract.
  - (2) Technical or scope of services questions specific to projects posted with a programmatic group.
- c. When completed selections must be publicly announced.

3. Advertisement

For selection procedures that require public notification, Requests for Letters of Interest “RFLol” must be advertised on the Consultant Services page of ODOT’s website.

4. Disclosure of Selection Information

All selection information including consultant letters of interest shall be available for public disclosure upon completion of the selection.

Information that is not subject to public disclosure at any time includes financial statements and other confidential financial information submitted by a consultant.

5. Supporting Documentation

Documentation supporting the solicitation, proposal, evaluation, and selection of the consultant shall be retained.

6. Prohibited Selection Factors

- a. Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- b. In-State or local **preference** shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement for the minimum qualifications and competence of a consultant to perform the solicited services.

Refer to Section 5.2.C.1.n. below for additional guidance concerning the use of local **presence** as a nominal evaluation factor where appropriate.

B. Consultant Selection Processes

The LPA may use any one of five consultant selection processes permitted by 23 CFR 172 and ORC 153.65 – 153.71, the use of which depends on the complexity of the project, estimated total fee, the number of available qualified consultants and whether an emergency exists. The Programmatic and Technical Proposal selection processes are competitive qualifications based selection processes governed by 23 CFR 172.7(a)(1) and ORC 153.65 – 153.71. These selection processes require solicitation, evaluation, ranking, selection, and negotiation in accordance with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40

U.S.C. 1101-1104, commonly referred to as the Brooks Act or Selection of Architects and Engineers.

The Small Purchase selection process is a non-competitive selection process governed by 23 CFR 172.7(a)(2) and ORC 153.71(A). Agreements with total fees less than \$50,000 are eligible for this selection process.

The Emergency and Special Expertise selection processes are non-competitive selection processes governed by 23 CFR 172.7(a)(3) and ORC 153.71.

1. Programmatic Selection Process

The Programmatic Selection Process is a one-step selection process intended to shorten the selection/authorization process for non-complex projects while reducing paperwork and administrative costs for both consultants and the State. In this process consultants are selected based on standard letter of interest content, and a standard Selection Rating Form.. The “Programmatic” selection process should be used for most projects that do not meet the criteria for the more elaborate Technical Proposal Selection Process.

2. Technical Proposal Selection Process

The technical proposal selection process is a two-step process intended for use on larger, more complex projects for which a more informed selection decision can be made based on additional information received through the submittal of a (more elaborate) Technical Proposal, and/or presentations/interviews. The Technical Proposal Selection Process is appropriate to use under the following circumstances:

- a. Complex projects involving multiple PDP steps and multiple disciplines including planning, environmental and design services.
- b. Projects that include complex project management challenges in which the role of the consultant project manager will be crucial to project success, and may require extensive public involvement activities.
- c. Specialized services for which the LPA has limited experience and performance records for past projects.
- d. Generally any project for which a single submittal does not provide sufficient information to make a well informed selection decision.

The technical proposal selection process includes the initial submittal of a letter of interest similar to the Programmatic Selection Process, and then “shortlisting” to at least three of the most highly qualified firms. The standard letter of interest content may be revised to include increased page limits and project specific content. The shortlisted firms are then required to submit additional written information (technical proposal) and/or participate in additional discussions or presentation/interview. The content of the technical proposal and the format of interviews can be tailored to fit the requirements of specific projects.

Discussions, if required by the RFLol, may be written, by telephone, video conference, or by oral presentation/interview and shall be with at least three of the most highly qualified consultants to clarify the technical

approach, qualifications, and capabilities provided in response to the RFLol.

The process for shortlisting at least three consultants is identical to that of the Programmatic Selection Process. The final selection of a single consultant also follows the same process but considers the written technical proposal and/or presentation/interview along with the initial letter of interest.

3. Emergency Selection Process

The LPA may directly select a consultant for a project determined by the Director of Transportation to be an emergency which will not permit the time necessary to conduct a competitive selection process. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT's Consultant Contract Administration.

4. Small Purchase Selection Process

The LPA may directly select consultants without solicitation for projects with an estimated total fee of less than \$50,000. The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of fee exempt procedures. The following requirements apply:

- a. The qualifications of a minimum of three consultants must be reviewed prior to selection. The consultants considered for selection and the reasons for selecting the most qualified consultant shall be documented.

In instances where two or fewer consultants are considered qualified, the LPA may proceed with evaluation and selection if it is determined that the project requirements did not contain conditions or requirements that arbitrarily limited competition. The reasons for proceeding with the selection shall be documented.

- b. The full amount of any contract modification that would cause the total contract amount to exceed \$50,000 is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if Federal funds are used in modifying an agreement above the \$50,000 simplified acquisition threshold.
- c. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT's Consultant Contract Administration.

5. Special Expertise Selection Process

The LPA may directly select consultants for projects for which the service is available only from a single source. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT's Consultant Contract Administration.

C. Selection Procedures – Programmatic Selection Process

1. Letter of Interest Content

Requests for Letters of Interest (RFLol) shall include the following:

- a. Project name from Ellis (County-Route-Section);
- b. A description of the project including the location.
- c. A description of the selection process to be used, including the number of steps (direct selection based on the information provided, or a two-step process with a short list and technical proposal and/or interviews, etc.), and the selection rating criteria to be used. The standard selection rating form included herein should be used for most projects.
- d. Any restrictions on communicating with government officials during the selection process.
- e. Any restrictions concerning suspended or debarred firms.
- f. Date that the letter of interest is due. The minimum response time shall be two weeks from the initial posting date.
- g. The approximate construction cost if available.
- h. Any special provisions or contract requirements associated with the services.
- i. The following notification:  
  
*The [LPA] in accordance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, all bidders including disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex (including pregnancy, gender identity and sexual orientation), age, disability, low-income status, or limited English proficiency in consideration for an award.*
- j. The DBE Goal requirements and related selection procedures.
- k. Major work elements involved.
- l. A detailed scope of services for the agreement.
- m. The ODOT prequalification(s) required to provide the services;
- n. Subfactors - Any important aspects of a project, if any, that will play a large role in the consultant selection process.

In-State or local preference shall not be used as a selection factor or subfactor, however a local presence may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis

for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

- o. The contract type and payment method(s) anticipated to contract for the solicited services. Refer to Chapter 4 of ODOT's Consultant Contract Administration for detailed explanations of contract types and payment methods.
- p. Estimated date of authorization.
- q. Time period in which the work must be completed.
- r. Instructions for submitting a letter of interest including content and required format. The information requested should be consistent with the rating criteria.
- s. Required content of the letter of interest (RFLol) including;
  - (1) The firm's general qualifications.
  - (2) Proposed key staff including key subconsultant staff and project approach.
  - (3) A listing of subconsultants including project responsibility.
  - (4) Whether resumes of key staff members must be submitted.
  - (5) Other information needed to make an informed selection decision.

## 2. Evaluation Process

- a. Initially evaluate all firms for compliance with the following requirements, advise Districts of the firms that must be eliminated from further consideration and the reason for elimination:
  - (1) Compliance with general Lol requirements, current negligence issues, and ongoing performance issues identified through CES, overall low CES rating, insufficient staff, excessive workload, or any other significant issues relative to a firm's performance.
  - (2) Inclusion on the list of firms suspended or debarred by the Federal Government.
  - (3) For projects noted as having DBE Goals, ODOT will determine whether the consultant made a good faith effort to meet the goal in accordance with 49 CFR 26.53 and Appendix A to Part 26. The letter of interest must show that the consultant has made good faith efforts to meet the goal. Good faith efforts may include: (1) Documentation that the consultant has obtained enough DBE or EDGE (Encouraging Diversity, Growth and Equity) participation to

meet the goal; or (2) Documentation that it made adequate good faith efforts, as defined in 49 CFR 26.53, to meet the goal, even though it did not succeed in obtaining enough DBE/EDGE participation to do so. Consultants that do not show good faith efforts to meet the Goal will not be eligible for selection.

- b. Compliance with prequalification requirements.
- c. Reduce the number of firms to 3-6 for each project through a process of elimination, based on the selection rating factors included in the Consultant Selection Rating Form. Firms may be eliminated due to fatal flaws, overall weakness of team relative to other firms, weak project approach, etc. Provide written documentation concerning the reasons for eliminating a firm from consideration.

In instances where two or fewer consultants respond to the RFLol, or two or fewer consultants are considered qualified to be shortlisted, the LPA may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition. The reasons for proceeding with the selection shall be documented.

- d. For each project, rate each shortlisted firm using the selection rating form.  
  
Supplement the numerical ratings with written comments that explain the differential scoring. The highest rated firm shall be selected.

### 3. Selection Rating Procedures

- a. ODOT's standard consultant selection rating form is shown below. The LPA may use a modified selection rating form that meets the requirements of 23 CFR 172 and ORC 153.65 – 153.71.
- b. Selection evaluations should be based on collaborative discussions of the selection committee members concerning the overall strengths and weaknesses of the teams, including the relative importance of the various selection rating factors relative to the specific requirements of the project. Numerical weights are a guide as to what is important but the selection should not be a mathematical exercise consisting of the addition of scores determined by individual team members. The selection team members should work to reach consensus in determining a single selection rating including written comments that document the reasons for the numerical scores.
- c. For each selection rating factor, each short listed firm shall be ranked, with the highest ranked firm receiving the maximum number of points, and lower ranked firms receiving commensurately lower scores. If firms are considered to be equally qualified, the firms may receive the same score for that selection rating factor. The rankings and scores should be based on each firm's specific proposal and project approach, including the named project manager, staff and subconsultants. Experience on similar projects, past performance for the LPA and other agencies should be considered. The selection committee may contact other ODOT Districts and outside agencies if necessary. Any subfactors identified in the RFLol should be weighed heavily in the differential scoring.

Differential scoring should consider the relative importance of a selection factor in the success of a given project. The project manager's role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differential scores assigned to projects that require a larger role for the project manager. Similar consideration should be given to all selection factors

4. ODOT's Consultant Selection Rating Form and Selection Rating Notes

Category	Total Value	Scoring Criteria	Score
<b>Management &amp; Team</b>			
Project Manager	10	See Note a. below	
Strength/Experience of Assigned Staff including Subconsultants	25	See Note b. below	
Firm's Current Workload/ Availability of Personnel	10	See Note c. below	
<b>Consultant's Past Performance</b>	30	See Note d. below	
<b>Project Approach</b>	25	See Note e. below	
<b>Total</b>	100		

The following discussion addresses each selection rating factor including scoring methodology, appropriate sources of information and factors that may not be considered.

a. Project Manager

The proposed project manager for each consultant shall be ranked, with the highest ranked project manager receiving the greatest number of points, and lower ranked project managers receiving commensurately lower scores. The rankings and scores should be based on each project manager's experience on similar projects and past performance for the LPA. The selection committee may contact ODOT and outside agencies if necessary. Any subfactors identified should be weighed heavily in the differential scoring.

Differential scoring should consider the relative importance of the project manager's role in the success of a given project. The project manager's role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differentials assigned to projects that require a larger role for the project manager.

b. Strength/Experience of Assigned Staff including Subconsultants

The experience and strength of the assigned staff, including subconsultant staff, should be ranked and scored as noted for Number 1 above, with higher differential scores assigned on more difficult projects. Any



subfactors identified in the project notification should be weighed heavily in the differential scoring.

As above, ODOT and other agencies may be contacted.

c. Firm's Current Workload/ Availability of Personnel (Considered at statewide meeting)

In instances when consultant's current workload may impact their ability to complete the work as proposed, the firm's current workload and availability of qualified personnel shall be considered.

d. Consultant's Past Performance

The consultants' past performance on similar projects, including subconsultant performance, shall be ranked and scored on a relative, differential scoring type basis, with the highest ranked consultant receiving a commensurately greater number of points. The selection team should consider ODOT CES performance ratings if available, and consult other ODOT Districts, ODOT Central Offices, and other agencies as appropriate. The use of CES ratings shall place emphasis on the specific type of services requested.

The differential scoring should consider the complexity of the project and any subfactors identified in the project notification.

e. Project Approach

Evaluation of the firm's project approach shall consider:

- (1) The firm's technical approach and understanding of the project.
- (2) The firm's qualifications for the project including knowledge and experience concerning relevant ODOT standards, procedures and guidance documents.
- (3) Any innovative ideas.

When considering this factor in rating firms, the type of project and the relevance of this factor to the project must be considered. For task order and construction inspection projects, and small uncomplicated design projects, the possibility for innovation may be very limited. Larger more complex projects will generally offer more opportunities for innovation. Consultants that identify truly innovative ideas should receive credit in the selection rating, but this factor can be disregarded when projects offer little opportunity for innovation.

- (4) The firm's project specific plan for ensuring increased quality, reduced project delivery time and reduced project costs.

These factors will be relatively more important and relevant to a complex PDP project, and much less important for a construction inspection or task order contract. Please remember that Federal

rules prohibit consideration of overhead rates, wage rates or any other cost data submitted voluntarily by the consultant.

D. Negotiation of Consultant Agreements

Agreements shall be negotiated in accordance with ODOT's Manual for Administration of Contracts for Professional Services, Volume 1 Consultant Contract Administration, Section 3.9.

E. Agreements

ODOT will prepare the LPA/Consultant Agreement between the Consultant and LPA. The agreement will be transmitted to the LPA by the ODOT District Office. A copy of the executed LPA/Consultant Agreement shall be returned to the District Office.

F. Documentation of Consultant Selections

The LPA shall maintain a consultant selection file that includes the following information, and provide copies of all documents to the District for their files.

1. A copy of the Request for Proposal and the date posted on ODOT's website;
2. A listing of firms that submitted Letters of Interest;
3. Letters of Interest from all firms that submitted;
4. Selection rating forms and any supporting notes and documentation, including membership of the selection committee;
5. A listing of firms selected to submit technical proposals (if applicable), copies of the technical proposals, and related correspondence;
6. Selected consultant's Price Proposal;
7. Negotiation records; and
8. A copy of the Agreement, Scope of Services, authorization letter, Invoice and Project Schedule, and any other documents relevant to the agreement.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

6.1 All right-of-way 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 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. Refer to Sections 4.2 and 4.4 concerning Federal authorization.

6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way 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 right of way 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. Likewise, a consultant hired to perform right of way acquisition work is not permitted to perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.

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 guidelines.

- 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 State rules, policies and guidelines 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 certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way 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 Right of Way Certification, 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 of the 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 The **LPA** will coordinate with utilities, complete RE-75 forms, establish encumbrances towards each utility if needed, prepare an invoice to the LPA for the local share, and pay the State share as needed. 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. In the event that a utility is delaying the relocation of its facilities, the LPA shall take any action necessary to order and cause the removal and relocation of such utility. No reimbursable costs shall be incurred prior to the receipt of Federal Authorization for Right of Way from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 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.
- 6.8 ODOT shall be responsible for any necessary railroad coordination and agreements in accordance 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 Consistent with sections 10.1 and 10.4 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 10.1 and 10.4 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.
7. ADVERTISING, SALE AND AWARD
- 7.1 ODOT will prepare the State's estimate and manage the advertising, sale and award process. The LPA and its consultant shall assist in responding to bidder questions, preparation of any addenda and other coordination as needed. ODOT's Awards Committee shall determine award of the contract.
8. CONSTRUCTION CONTRACT ADMINISTRATION
- 8.1 ODOT will administer the construction contract in accordance with ODOT's Construction Administration Manual of Procedures. The LPA and LPA's consultants shall respond promptly to requests for information or other construction issues. The LPA shall review and approve all change

orders. The LPA and LPA's consultant shall assist in defending ODOT against any contractor claims.

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 section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

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 contractor performance and payment bond(s) and consultant insurance 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 identification 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 identification 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 identification 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 ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. For a PROJECT upon which a DBE goal is assigned, the LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this PROJECT for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the ORC.

Pursuant to 49 CFR 26.13(b), the LPA agrees not to discriminate on the basis of race, color, national origin, or sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status, or limited English proficiency in the performance of this Agreement. The LPA agrees to carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. The LPA understands that failure to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as ODOT deems appropriate.

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 United States Department of Transportation (hereinafter “U.S. DOT”) Title 49, Code of Federal Regulations, 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 Professional Services:** In all solicitations for professional services made by the LPA for work to be performed under a contract or subcontract, each potential consultant 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 consultants or contractors 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 consultants and contractors 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 consultants or contractors 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 or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor 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 failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement with thirty (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, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (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 obligation of the parties herein may be terminated by either party with thirty days written notice to the other party. In the event of termination, the LPA shall cease 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 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 section 126.30 of the ORC.
- 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:

Michael Dylan Brennan, Mayor	John P. Picuri, P.E. , District Deputy Director
City of University Heights	Ohio Department of Transportation, D-12
2300 Warrensville Center Road	5500 Transportation Boulevard
University Heights, Ohio 44118	Garfield Heights, Ohio 44125

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.

**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.

1 A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.

2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 percent 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-percent de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.





**3. 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 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:* If one or more phases of this AGREEMENT include a sub-award of federal funds to the LPA, the LPA shall comply with the financial reporting and audit requirements of 2 CFR Part 200. If not, the financial reporting and audit requirements remain with ODOT.

All non-federal entities, including ODOT’s LPA subrecipients, 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.

---

3 [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA’s direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.

4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA’s direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

LPAs that expend Federal and State funds in the Preliminary Engineering and/or Right of Way phases of the Project must track these payments throughout the life of the in order to ensure an accurate Schedule of Expenditures of Federal Award (hereinafter referred to as 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 funds related to this PROJECT are reported when the activity related to the Federal award occurs.<sup>5</sup> 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 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 contract.

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 Laws:** LPA agrees they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.
- 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 Ohio Revised Code 9.76(B), the LPA and any contractor or sub-contractor shall warrant that they are not boycotting any jurisdiction with whom the United States and the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its Contractors, subcontractors, and any agent of the Contractor or its subcontractors, acquire any supplies or services in accordance with all trade

---

<sup>5</sup> Per 2 CFR §200.502

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 R.C. 153.02 or R.C. 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 of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the 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.

<b>LPA: CITY OF UNIVERSITY HEIGHTS</b>	<b>STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION</b>
By:	By:
Michael Dylan Brennan Mayor	Jack Marchbanks Director
Date:	Date:

**Attachment 1**

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

SOURCES 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	\$346,378.95	20	4BG7	\$1,385,515.79	80	4TA7				\$1,731,894.74
CONSTRUCTION ENGINEERING	\$12,114.55	20	LABR	\$48,458.21	80	LABR				\$60,572.76
	\$77,978.82	100	LABR							\$77,978.82
<b>TOTALS</b>	\$436,472.32			\$1,433,974.00						\$1,870,446.32

**Attachment 2**

**CUY CEDAR ROAD**  
COUNTY-ROUTE-SECTION

---

**112495**  
PID NUMBER

---

**36939**  
AGREEMENT NUMBER

---

DUNS NUMBER

**DIRECT PAYMENT OF CONSULTANT**

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 consultant shall be paid directly to the consultant 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 consultant. In addition, the invoice must state the consultant’s name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the consultant and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the consultant, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (subrecipient). 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 City of University Heights request that all payments for the Federal/State share of the  
(NAME OF LPA)

consultant costs of this agreement performed by \_\_\_\_\_  
(CONSULTANT’S NAME)

be paid directly to \_\_\_\_\_  
(CONSULTANT’S NAME)

VENDOR Name:	
Oaks Vendor ID:	
Mailing Address:	
LPA signature:	

LPA Name:	City of University Heights
Oaks Vendor ID:	
Mailing Address:	2300 Warrensville Center Road
	University Heights, Ohio 44118
ODOT Approval signature:	

9/28/2021

Ordinance 2021-41  
**PRELIMINARY LEGISLATION**  
(LPA-ODOT-Let Project Agreement)  
(PARTICIPATORY)

Ordinance # : \_\_\_\_\_  
PID No. : 112495  
County/Route/Section : CUY-Cedar Road  
Cooperative Agreement #: \_\_\_\_\_  
Agreement No: 36939

The following is an ordinance enacted by the City of University Heights of Cuyahoga  
(Ordinance/Resolution) (Local Public Agency)  
County, Ohio, hereinafter referred to as the Local Public Agency (LPA).

**SECTION I – Project Description**

WHEREAS, the LPA has determined the need for the described project:

**Resurfacing and improvement of pedestrian crossings on Cedar Road (CR-23) from South Taylor Road to South Green Road (suspending and resuming work at concrete section from Fenwick Rd to Miramar Blvd) in the Cities of University Heights and South Euclid.**

NOW THEREFORE, be it ordained by the City of University Heights of Cuyahoga County, Ohio.  
(LPA)

**SECTION II – Consent Statement**

Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above described project as detailed in the LPA-ODOT-Let Agreement entered into between the parties, if applicable.

**SECTION III – Cooperation Statement**

The LPA shall cooperate with the Director of Transportation in the development and construction of the above described project and shall enter into a LPA Federal ODOT Let Project Agreement, if applicable, as well as any other agreements necessary to develop and construct the Project.

*The LPA agrees to participate in the cost of the project. The LPA agrees to assume and contribute the entire cost and expense of the improvement less the amount of Federal-aid funds set aside by the Director of Transportation for the financing of this improvement from funds allocated by the Federal Highway Administration, United States Department of Transportation.*

*The LPA further agrees to pay 100% of the cost of those features requested by the LPA which are determined by the State and Federal Highway Administration to be unnecessary for the Project.*

PID No.: 112495

*The LPA further agrees that change orders and extra work contracts required to fulfill the construction contracts shall be processed as needed. The State shall not approve a change order or extra work contract until it first gives notice, in writing, to the LPA. The LPA shall contribute its share of the cost of these items in accordance with other sections herein.*

The LPA agrees that if Federal Funds are used to pay the cost of any consultant contract, the LPA shall comply with 23 CFR 172 in the selection of its consultant and administration of the consultant contract. Further the LPA agrees to incorporate ODOT's "Specifications for Consulting Services" as a contract document in all of its consultant contracts. The LPA agrees to require, as a scope of services clause, that all plans prepared by the consultant must conform to ODOT's current design standards and that the consultant shall be responsible for ongoing consultant involvement during the construction phase of the Project. The LPA agrees to include a completion schedule acceptable to ODOT and to assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.

#### **SECTION IV Authority to Sign**

The LPA hereby authorizes \_\_\_\_\_ of said City of University Heights to  
(Signature authority) (LPA-or its division, department or agency)  
enter into and execute contracts with the Director of Transportation which are necessary to develop plans for and to complete the above-described project; and to execute contracts with ODOT pre-qualified consultants for the preliminary engineering phase of the Project.

Upon request of ODOT, the \_\_\_\_\_ is also empowered to execute any appropriate documents to  
(Signature authority)  
affect the assignment of all rights, title, and interests of the City of University Heights to ODOT arising from any  
(LPA)  
agreement with its consultant in order 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.

#### **SECTION V – Utilities and Right-of-Way Statement**

The LPA agrees that all right-of-way required for the described project will be acquired and/or made available in accordance with current State and Federal regulations. The LPA also understands that right-of-way costs include eligible utility costs.

The LPA agrees that all utility accommodation, relocation and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.



**SECTION VI – Maintenance**

Upon completion of the Project, and unless otherwise agreed, the LPA shall: (1) provide adequate maintenance for the Project in accordance with all applicable State and Federal law, including, but not limited to, Title 23, U.S.C., Section 116; (2) provide ample financial provisions, as necessary, for the maintenance of the Project; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

**SECTION VII-Emergency measure**

(as applicable)

The ordinance is hereby declared to be an emergency measure to expedite the highway project and  
(Ordinance/Resolution)

to promote highway safety. Following appropriate legislative action, it shall take effect and be in force immediately upon its passage and approval, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

City of University Heights

\_\_\_\_\_  
Michael Dylan Brennan, Mayor

Attested: \_\_\_\_\_  
Kelly M. Thomas, Clerk of Council

Approved as to Form: \_\_\_\_\_  
Luke F. McConville, Law Director

9/28/2021

PID No.: 112495

**CERTIFICATE OF COPY  
STATE OF OHIO**

City of University Heights of Cuyahoga County, Ohio  
(LPA)

I, Kelly M. Thomas, as Clerk of the City of University Heights  
(LPA)

of Cuyahoga County, Ohio, do hereby certify that the foregoing is a true and correct copy of

ordinance adopted by the legislative Authority of the said  
(Ordinance/Resolution)

City of University Heights on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.  
(LPA)

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, if applicable,  
this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

**SEAL**

\_\_\_\_\_  
(Clerk)

City of University Heights of Cuyahoga County, Ohio  
(LPA)

(If the LPA is designated as a City then the "City Seal" is required. If no Seal, then a letter stating "No Seal is required to accompany the executed legislation.")



- 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 Subtitle I, Chapter 11, Sections 1101-1104, the "Brooks Act." – "Selection of Architects and Engineers"
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 153.65 through 153.71
- ORC 5501.03(D)
- OAC 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
- State of Ohio Department of Transportation Construction and Material Specifications Manual
- State of Ohio Department of Transportation Construction Administration 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.

3. FUNDING AND PAYMENT

3.1 The total cost for the PROJECT is estimated to be \$ 1,870,446.32 as set forth in Attachment 1.

ODOT shall provide to the LPA 80 percent of the eligible costs, up to a maximum of \$ 1,433,974 in Federal (4TA7) 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 transportation project improvements and construction engineering/inspection activities.

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

3.3 All funding from ODOT under this Agreement operates on a reimbursement basis. The LPA shall review and/or approve all contractor invoices for materials, equipment and labor prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.

3.4 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 reimbursement of the 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 on a daily basis as the items of work are completed and accepted.

3.5 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. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.

3.6 The LPA shall certify in writing that the PROJECT was developed and delivered in compliance with the terms, conditions and requirements of the PROJECT Agreement with his/her Professional Engineer's seal and signature. The LPA shall then provide the final report to the ODOT District within 6 months of the physical completion date of the PROJECT so that the report may be audited and approved for payment. If the deadline cannot be met, a written explanation must be provided to the District prior to the end of the 6 months documenting the reason and the new anticipated date of completion. If the extended deadline is not met, then this process must be repeated until the PROJECT is completed. Failure to follow this process may result in the immediate close-out of the PROJECT and loss of further funding.

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

<b>City of University Heights</b>
<b>2300 Warrensville Center Road</b>
<b>University Heights, Ohio 44118</b>

4. PROJECT DEVELOPMENT

4.1 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.

4.2 Project Development shall follow ODOT's Project Development Process and all ODOT standards for environmental evaluations, design, plan preparation, right of way acquisition, utility relocation and other processes as set out in the Department's Design Reference Resource Center, available on ODOT's website ([www.dot.state.oh.us/drrc/Pages/default.aspx](http://www.dot.state.oh.us/drrc/Pages/default.aspx)). Responsibilities for development of the PROJECT shall be as follows and further described herein:

**LPA ODOT Let Project Responsibility Assignments**

PDP Phase	Activity	Responsibility		Commentary
		LPA	ODOT	
Planning	All	X		ODOT to provide coordination as needed
Preliminary Engineering	All	X		ODOT to: 1) Provide coordination as needed 2) Review all plans and documents and provide comments
Environmental Engineering	Stage 1 Plans	X		ODOT to review all plans and documents and provide comments.

	Stage 2 Plans	X		ODOT to review all plans and documents and provide comments.
	Value Engineering		X	ODOT will coordinate Value Engineering if required. Refer to Section 4.7.
	Cost Estimates	X		LPA/Consultant shall prepare in Estimator format.
	NEPA	X		ODOT will coordinate NEPA approval. Refer to Section 4.7 for Environmental Responsibilities.
	Permits		X	ODOT will obtain permits needed to construct the PROJECT.
	R/W Plans	X		ODOT to review all plans and documents and provide comments.
	Public/Stakeholder Involvement	X		ODOT to review all PI plans and materials and provide comments.
Final Engineering & R/W	R/W Acquisition & Relocation	X		Refer to Section 6 for detailed requirements.
	Utility Relocation	X		Refer to Section 6.6 for additional details.
	Railroad Coordination and Agreements		X	Refer to Section 6.8 for additional details.
	Stage 3 Plans	X		ODOT to review all plans and documents and provide comments.
	Cost Estimates	X		LPA shall prepare in Estimator format.
	Final Plan Package	X		ODOT to review all plans and documents and provide comments.
	Mitigation		X	ODOT will coordinate any required mitigation efforts.
	Public/Stakeholder Involvement	X		ODOT to review all PI plans and materials and provide comments.

Construction	Advertise		X	LPA and consultants to assist in responding to bidder questions and preparation of any addenda.
	Award		X	ODOT Awards Committee
	Administer Construction Contract		X	ODOT will administer the construction contract. The LPA and LPA's consultants shall respond promptly to requests for information or other construction issues.
	Public/Stakeholder Involvement	X	X	ODOT to coordinate in cooperation with the LPA.
All Phases	Federal Authorizations		X	ODOT will coordinate and obtain all needed FHWA Authorizations and notify the LPA upon approval.
All Phases	Encumbrance of Funds		X	ODOT will encumber funds in accordance with this Agreement.

4.3 The LPA shall designate an LPA employee to act as the LPA Project Manager and act as the point of contact for all communications with ODOT.

4.4 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.

4.5 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.

4.6 Environmental Responsibilities

- A. In the administration of this PROJECT, the Permittee shall be responsible for conducting any required public involvement activities, 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 and related regulations, including the requirements of the National Historic Preservation Act.
- B. If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire a consultant in accordance with Section 5.
- C. 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.
- D. Whichever party obtains the Project's environmental clearance or permits shall be responsible for assuring compliance with all commitments made as part of such clearance or permit requirements during the construction of the PROJECT.

- E. The LPA shall require its consultant to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act.
- F. The LPA shall require its consultant to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- G. The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required from the Ohio EPA.

#### 4.7 Use of ODOT Consultant Agreements

- A. ODOT may provide services through ODOT held consultant agreements at its discretion subject to funding participation by the LPA. Agreements that may be available for use include the following:
  1. If the LPA chooses to utilize the CEAO task order contract for environmental services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any acquisition authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.
  2. If the LPA chooses to utilize the CEAO task order contract for right-of-way acquisition services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any acquisition authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.
  3. Value Engineering. If Value Engineering is required, the Department may elect to use an ODOT held agreement to assist in administering the Value Engineering process. If Value Engineering is required, the LPA shall require its consultants to participate as needed.

### 5. CONSULTANT SELECTION AND ADMINISTRATION

#### 5.1 General Requirements

- A. The LPA must select a consultant/ consultant team that is prequalified by ODOT for all services to be performed by the consultant and subconsultants.
- B. The LPA must incorporate ODOT's "Specifications for Consulting Services – 2016 Edition" as a contract document in all of its consultant contracts.



- C. The LPA must require, as a scope of services clause, that project development follow ODOT's Project Development Process, and that all documents and plans prepared by the consultant must conform to ODOT's current standards, including the electronic deliverable requirements of ODOT's CADD Engineering Standards Manual, and Location and Design Manual Volume 3, Section 1500.
- D. The LPA consultant agreement must provide for ongoing consultant involvement during the construction phase of the Project.
- E. The LPA consultant agreement must include a completion schedule acceptable to ODOT.
- F. The LPA must assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.
- G. The LPA must cooperate with ODOT in directing additional or corrective work, and to recover damages due to errors or omissions.
- H. If Federal Funds are used to pay the cost of any contract for professional services, the LPA must comply with 23 CFR 172, Sections 153.65 through 153.71 of the Ohio Revised Code and Section 5.2 below in the selection of consultants, and administer consultant agreements in accordance with ODOT's Manual for Administration of Contracts for Professional Services. Professional services, as defined in Sections 5526.01 and 153.65(C) of the Ohio Revised Code, include the practice of engineering (including inspection of construction), the practice of surveying, the practice of architecture including landscape architecture, evaluation of environmental impacts, right-of-way acquisition services and administration of construction contract claims.

5.2 Procedures for LPA Selection of Consultants for Agreements that Include Federal Funds in Preliminary Engineering

A. Policies in Selection of Consultants

1. Restrictions Concerning LPA Preferences

The LPA **shall not** offer direction to consultants concerning preferences (or informal sanctions) for certain subconsultants or team arrangements. These arrangements are business decisions that must be made by consultants without direction from the LPA. The LPA must make selection decisions on the basis of proposed teams without advance "steering" of teams.

2. Communications Restrictions

Please note the following policy concerning communication between Consultants and the LPA during the announcement and selection process:

During the time period between advertisement and the announcement of final consultant selections for the Programmatic Selection Process, communication with consultants (or their agents) shall be limited as follows:

a. Communications which are strictly prohibited:

- (1) Communication with the LPA: Any marketing or similar discussions of the specific project if the consultant has submitted or plans to submit a letter of interest, or is included as a subconsultant on a submittal by another firm.

- b. Allowable communications include:
  - (1) Project administration activities for authorized agreements, scope and negotiation activities for projects selected but not under contract.
  - (2) Technical or scope of services questions specific to projects posted with a programmatic group.
- c. When completed selections must be publicly announced.

3. Advertisement

For selection procedures that require public notification, Requests for Letters of Interest “RFLol” must be advertised on the Consultant Services page of ODOT’s website.

4. Disclosure of Selection Information

All selection information including consultant letters of interest shall be available for public disclosure upon completion of the selection.

Information that is not subject to public disclosure at any time includes financial statements and other confidential financial information submitted by a consultant.

5. Supporting Documentation

Documentation supporting the solicitation, proposal, evaluation, and selection of the consultant shall be retained.

6. Prohibited Selection Factors

- a. Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- b. In-State or local **preference** shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement for the minimum qualifications and competence of a consultant to perform the solicited services.

Refer to Section 5.2.C.1.n. below for additional guidance concerning the use of local **presence** as a nominal evaluation factor where appropriate.

B. Consultant Selection Processes

The LPA may use any one of five consultant selection processes permitted by 23 CFR 172 and ORC 153.65 – 153.71, the use of which depends on the complexity of the project, estimated total fee, the number of available qualified consultants and whether an emergency exists. The Programmatic and Technical Proposal selection processes are competitive qualifications based selection processes governed by 23 CFR 172.7(a)(1) and ORC 153.65 – 153.71. These selection processes require solicitation, evaluation, ranking, selection, and negotiation in accordance with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40

U.S.C. 1101-1104, commonly referred to as the Brooks Act or Selection of Architects and Engineers.

The Small Purchase selection process is a non-competitive selection process governed by 23 CFR 172.7(a)(2) and ORC 153.71(A). Agreements with total fees less than \$50,000 are eligible for this selection process.

The Emergency and Special Expertise selection processes are non-competitive selection processes governed by 23 CFR 172.7(a)(3) and ORC 153.71.

1. Programmatic Selection Process

The Programmatic Selection Process is a one-step selection process intended to shorten the selection/authorization process for non-complex projects while reducing paperwork and administrative costs for both consultants and the State. In this process consultants are selected based on standard letter of interest content, and a standard Selection Rating Form.. The “Programmatic” selection process should be used for most projects that do not meet the criteria for the more elaborate Technical Proposal Selection Process.

2. Technical Proposal Selection Process

The technical proposal selection process is a two-step process intended for use on larger, more complex projects for which a more informed selection decision can be made based on additional information received through the submittal of a (more elaborate) Technical Proposal, and/or presentations/interviews. The Technical Proposal Selection Process is appropriate to use under the following circumstances:

- a. Complex projects involving multiple PDP steps and multiple disciplines including planning, environmental and design services.
- b. Projects that include complex project management challenges in which the role of the consultant project manager will be crucial to project success, and may require extensive public involvement activities.
- c. Specialized services for which the LPA has limited experience and performance records for past projects.
- d. Generally any project for which a single submittal does not provide sufficient information to make a well informed selection decision.

The technical proposal selection process includes the initial submittal of a letter of interest similar to the Programmatic Selection Process, and then “shortlisting” to at least three of the most highly qualified firms. The standard letter of interest content may be revised to include increased page limits and project specific content. The shortlisted firms are then required to submit additional written information (technical proposal) and/or participate in additional discussions or presentation/interview. The content of the technical proposal and the format of interviews can be tailored to fit the requirements of specific projects.

Discussions, if required by the RFLol, may be written, by telephone, video conference, or by oral presentation/interview and shall be with at least three of the most highly qualified consultants to clarify the technical

approach, qualifications, and capabilities provided in response to the RFLol.

The process for shortlisting at least three consultants is identical to that of the Programmatic Selection Process. The final selection of a single consultant also follows the same process but considers the written technical proposal and/or presentation/interview along with the initial letter of interest.

3. Emergency Selection Process

The LPA may directly select a consultant for a project determined by the Director of Transportation to be an emergency which will not permit the time necessary to conduct a competitive selection process. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT's Consultant Contract Administration.

4. Small Purchase Selection Process

The LPA may directly select consultants without solicitation for projects with an estimated total fee of less than \$50,000. The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of fee exempt procedures. The following requirements apply:

- a. The qualifications of a minimum of three consultants must be reviewed prior to selection. The consultants considered for selection and the reasons for selecting the most qualified consultant shall be documented.

In instances where two or fewer consultants are considered qualified, the LPA may proceed with evaluation and selection if it is determined that the project requirements did not contain conditions or requirements that arbitrarily limited competition. The reasons for proceeding with the selection shall be documented.

- b. The full amount of any contract modification that would cause the total contract amount to exceed \$50,000 is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if Federal funds are used in modifying an agreement above the \$50,000 simplified acquisition threshold.
- c. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT's Consultant Contract Administration.

5. Special Expertise Selection Process

The LPA may directly select consultants for projects for which the service is available only from a single source. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT's Consultant Contract Administration.

C. Selection Procedures – Programmatic Selection Process

1. Letter of Interest Content

Requests for Letters of Interest (RFLol) shall include the following:

- a. Project name from Ellis (County-Route-Section);
- b. A description of the project including the location.
- c. A description of the selection process to be used, including the number of steps (direct selection based on the information provided, or a two-step process with a short list and technical proposal and/or interviews, etc.), and the selection rating criteria to be used. The standard selection rating form included herein should be used for most projects.
- d. Any restrictions on communicating with government officials during the selection process.
- e. Any restrictions concerning suspended or debarred firms.
- f. Date that the letter of interest is due. The minimum response time shall be two weeks from the initial posting date.
- g. The approximate construction cost if available.
- h. Any special provisions or contract requirements associated with the services.
- i. The following notification:  
  
*The [LPA] in accordance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, all bidders including disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex (including pregnancy, gender identity and sexual orientation), age, disability, low-income status, or limited English proficiency in consideration for an award.*
- j. The DBE Goal requirements and related selection procedures.
- k. Major work elements involved.
- l. A detailed scope of services for the agreement.
- m. The ODOT prequalification(s) required to provide the services;
- n. Subfactors - Any important aspects of a project, if any, that will play a large role in the consultant selection process.

In-State or local preference shall not be used as a selection factor or subfactor, however a local presence may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis

for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

- o. The contract type and payment method(s) anticipated to contract for the solicited services. Refer to Chapter 4 of ODOT's Consultant Contract Administration for detailed explanations of contract types and payment methods.
- p. Estimated date of authorization.
- q. Time period in which the work must be completed.
- r. Instructions for submitting a letter of interest including content and required format. The information requested should be consistent with the rating criteria.
- s. Required content of the letter of interest (RFLol) including;
  - (1) The firm's general qualifications.
  - (2) Proposed key staff including key subconsultant staff and project approach.
  - (3) A listing of subconsultants including project responsibility.
  - (4) Whether resumes of key staff members must be submitted.
  - (5) Other information needed to make an informed selection decision.

## 2. Evaluation Process

- a. Initially evaluate all firms for compliance with the following requirements, advise Districts of the firms that must be eliminated from further consideration and the reason for elimination:
  - (1) Compliance with general Lol requirements, current negligence issues, and ongoing performance issues identified through CES, overall low CES rating, insufficient staff, excessive workload, or any other significant issues relative to a firm's performance.
  - (2) Inclusion on the list of firms suspended or debarred by the Federal Government.
  - (3) For projects noted as having DBE Goals, ODOT will determine whether the consultant made a good faith effort to meet the goal in accordance with 49 CFR 26.53 and Appendix A to Part 26. The letter of interest must show that the consultant has made good faith efforts to meet the goal. Good faith efforts may include: (1) Documentation that the consultant has obtained enough DBE or EDGE (Encouraging Diversity, Growth and Equity) participation to

meet the goal; or (2) Documentation that it made adequate good faith efforts, as defined in 49 CFR 26.53, to meet the goal, even though it did not succeed in obtaining enough DBE/EDGE participation to do so. Consultants that do not show good faith efforts to meet the Goal will not be eligible for selection.

- b. Compliance with prequalification requirements.
- c. Reduce the number of firms to 3-6 for each project through a process of elimination, based on the selection rating factors included in the Consultant Selection Rating Form. Firms may be eliminated due to fatal flaws, overall weakness of team relative to other firms, weak project approach, etc. Provide written documentation concerning the reasons for eliminating a firm from consideration.

In instances where two or fewer consultants respond to the RFLol, or two or fewer consultants are considered qualified to be shortlisted, the LPA may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition. The reasons for proceeding with the selection shall be documented.

- d. For each project, rate each shortlisted firm using the selection rating form.  
  
Supplement the numerical ratings with written comments that explain the differential scoring. The highest rated firm shall be selected.

### 3. Selection Rating Procedures

- a. ODOT's standard consultant selection rating form is shown below. The LPA may use a modified selection rating form that meets the requirements of 23 CFR 172 and ORC 153.65 – 153.71.
- b. Selection evaluations should be based on collaborative discussions of the selection committee members concerning the overall strengths and weaknesses of the teams, including the relative importance of the various selection rating factors relative to the specific requirements of the project. Numerical weights are a guide as to what is important but the selection should not be a mathematical exercise consisting of the addition of scores determined by individual team members. The selection team members should work to reach consensus in determining a single selection rating including written comments that document the reasons for the numerical scores.
- c. For each selection rating factor, each short listed firm shall be ranked, with the highest ranked firm receiving the maximum number of points, and lower ranked firms receiving commensurately lower scores. If firms are considered to be equally qualified, the firms may receive the same score for that selection rating factor. The rankings and scores should be based on each firm's specific proposal and project approach, including the named project manager, staff and subconsultants. Experience on similar projects, past performance for the LPA and other agencies should be considered. The selection committee may contact other ODOT Districts and outside agencies if necessary. Any subfactors identified in the RFLol should be weighed heavily in the differential scoring.

Differential scoring should consider the relative importance of a selection factor in the success of a given project. The project manager's role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differential scores assigned to projects that require a larger role for the project manager. Similar consideration should be given to all selection factors

4. ODOT's Consultant Selection Rating Form and Selection Rating Notes

Category	Total Value	Scoring Criteria	Score
<b>Management &amp; Team</b>			
Project Manager	10	See Note a. below	
Strength/Experience of Assigned Staff including Subconsultants	25	See Note b. below	
Firm's Current Workload/ Availability of Personnel	10	See Note c. below	
<b>Consultant's Past Performance</b>	30	See Note d. below	
<b>Project Approach</b>	25	See Note e. below	
<b>Total</b>	100		

The following discussion addresses each selection rating factor including scoring methodology, appropriate sources of information and factors that may not be considered.

a. Project Manager

The proposed project manager for each consultant shall be ranked, with the highest ranked project manager receiving the greatest number of points, and lower ranked project managers receiving commensurately lower scores. The rankings and scores should be based on each project manager's experience on similar projects and past performance for the LPA. The selection committee may contact ODOT and outside agencies if necessary. Any subfactors identified should be weighed heavily in the differential scoring.

Differential scoring should consider the relative importance of the project manager's role in the success of a given project. The project manager's role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differentials assigned to projects that require a larger role for the project manager.

b. Strength/Experience of Assigned Staff including Subconsultants

The experience and strength of the assigned staff, including subconsultant staff, should be ranked and scored as noted for Number 1 above, with higher differential scores assigned on more difficult projects. Any



subfactors identified in the project notification should be weighed heavily in the differential scoring.

As above, ODOT and other agencies may be contacted.

c. Firm's Current Workload/ Availability of Personnel (Considered at statewide meeting)

In instances when consultant's current workload may impact their ability to complete the work as proposed, the firm's current workload and availability of qualified personnel shall be considered.

d. Consultant's Past Performance

The consultants' past performance on similar projects, including subconsultant performance, shall be ranked and scored on a relative, differential scoring type basis, with the highest ranked consultant receiving a commensurately greater number of points. The selection team should consider ODOT CES performance ratings if available, and consult other ODOT Districts, ODOT Central Offices, and other agencies as appropriate. The use of CES ratings shall place emphasis on the specific type of services requested.

The differential scoring should consider the complexity of the project and any subfactors identified in the project notification.

e. Project Approach

Evaluation of the firm's project approach shall consider:

- (1) The firm's technical approach and understanding of the project.
- (2) The firm's qualifications for the project including knowledge and experience concerning relevant ODOT standards, procedures and guidance documents.
- (3) Any innovative ideas.

When considering this factor in rating firms, the type of project and the relevance of this factor to the project must be considered. For task order and construction inspection projects, and small uncomplicated design projects, the possibility for innovation may be very limited. Larger more complex projects will generally offer more opportunities for innovation. Consultants that identify truly innovative ideas should receive credit in the selection rating, but this factor can be disregarded when projects offer little opportunity for innovation.

- (4) The firm's project specific plan for ensuring increased quality, reduced project delivery time and reduced project costs.

These factors will be relatively more important and relevant to a complex PDP project, and much less important for a construction inspection or task order contract. Please remember that Federal

rules prohibit consideration of overhead rates, wage rates or any other cost data submitted voluntarily by the consultant.

D. Negotiation of Consultant Agreements

Agreements shall be negotiated in accordance with ODOT's Manual for Administration of Contracts for Professional Services, Volume 1 Consultant Contract Administration, Section 3.9.

E. Agreements

ODOT will prepare the LPA/Consultant Agreement between the Consultant and LPA. The agreement will be transmitted to the LPA by the ODOT District Office. A copy of the executed LPA/Consultant Agreement shall be returned to the District Office.

F. Documentation of Consultant Selections

The LPA shall maintain a consultant selection file that includes the following information, and provide copies of all documents to the District for their files.

1. A copy of the Request for Proposal and the date posted on ODOT's website;
2. A listing of firms that submitted Letters of Interest;
3. Letters of Interest from all firms that submitted;
4. Selection rating forms and any supporting notes and documentation, including membership of the selection committee;
5. A listing of firms selected to submit technical proposals (if applicable), copies of the technical proposals, and related correspondence;
6. Selected consultant's Price Proposal;
7. Negotiation records; and
8. A copy of the Agreement, Scope of Services, authorization letter, Invoice and Project Schedule, and any other documents relevant to the agreement.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

6.1 All right-of-way 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 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. Refer to Sections 4.2 and 4.4 concerning Federal authorization.

6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way 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 right of way 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. Likewise, a consultant hired to perform right of way acquisition work is not permitted to perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.

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 guidelines.

- 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 State rules, policies and guidelines 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 certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way 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 Right of Way Certification, 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 of the 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 The **LPA** will coordinate with utilities, complete RE-75 forms, establish encumbrances towards each utility if needed, prepare an invoice to the LPA for the local share, and pay the State share as needed. 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. In the event that a utility is delaying the relocation of its facilities, the LPA shall take any action necessary to order and cause the removal and relocation of such utility. No reimbursable costs shall be incurred prior to the receipt of Federal Authorization for Right of Way from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 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.
- 6.8 ODOT shall be responsible for any necessary railroad coordination and agreements in accordance 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 Consistent with sections 10.1 and 10.4 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 10.1 and 10.4 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.
7. ADVERTISING, SALE AND AWARD
- 7.1 ODOT will prepare the State's estimate and manage the advertising, sale and award process. The LPA and its consultant shall assist in responding to bidder questions, preparation of any addenda and other coordination as needed. ODOT's Awards Committee shall determine award of the contract.
8. CONSTRUCTION CONTRACT ADMINISTRATION
- 8.1 ODOT will administer the construction contract in accordance with ODOT's Construction Administration Manual of Procedures. The LPA and LPA's consultants shall respond promptly to requests for information or other construction issues. The LPA shall review and approve all change

orders. The LPA and LPA's consultant shall assist in defending ODOT against any contractor claims.

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 section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

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 contractor performance and payment bond(s) and consultant insurance 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 identification 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 identification 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 identification 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 ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. For a PROJECT upon which a DBE goal is assigned, the LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this PROJECT for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the ORC.

Pursuant to 49 CFR 26.13(b), the LPA agrees not to discriminate on the basis of race, color, national origin, or sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status, or limited English proficiency in the performance of this Agreement. The LPA agrees to carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. The LPA understands that failure to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as ODOT deems appropriate.

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 United States Department of Transportation (hereinafter “U.S. DOT”) Title 49, Code of Federal Regulations, 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 Professional Services:** In all solicitations for professional services made by the LPA for work to be performed under a contract or subcontract, each potential consultant 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 consultants or contractors 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 consultants and contractors 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 consultants or contractors 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 or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor 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 failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement with thirty (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, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (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 obligation of the parties herein may be terminated by either party with thirty days written notice to the other party. In the event of termination, the LPA shall cease 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 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 section 126.30 of the ORC.
- 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:

Michael Dylan Brennan, Mayor	John P. Picuri, P.E. , District Deputy Director
City of University Heights	Ohio Department of Transportation, D-12
2300 Warrensville Center Road	5500 Transportation Boulevard
University Heights, Ohio 44118	Garfield Heights, Ohio 44125

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.

**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.

1 A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.

2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 percent 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-percent de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.





**3. 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 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:* If one or more phases of this AGREEMENT include a sub-award of federal funds to the LPA, the LPA shall comply with the financial reporting and audit requirements of 2 CFR Part 200. If not, the financial reporting and audit requirements remain with ODOT.

All non-federal entities, including ODOT’s LPA subrecipients, 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.

---

3 [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA’s direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.

4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA’s direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

LPAs that expend Federal and State funds in the Preliminary Engineering and/or Right of Way phases of the Project must track these payments throughout the life of the in order to ensure an accurate Schedule of Expenditures of Federal Award (hereinafter referred to as 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 funds related to this PROJECT are reported when the activity related to the Federal award occurs.<sup>5</sup> 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 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 contract.

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 Laws:** LPA agrees they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.
- 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 Ohio Revised Code 9.76(B), the LPA and any contractor or sub-contractor shall warrant that they are not boycotting any jurisdiction with whom the United States and the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its Contractors, subcontractors, and any agent of the Contractor or its subcontractors, acquire any supplies or services in accordance with all trade

---

<sup>5</sup> Per 2 CFR §200.502

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 R.C. 153.02 or R.C. 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 of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the 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.

<b>LPA: CITY OF UNIVERSITY HEIGHTS</b>	<b>STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION</b>
By:	By:
Michael Dylan Brennan Mayor	Jack Marchbanks Director
Date:	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	\$346,378.95	20	4BG7	\$1,385,515.79	80	4TA7				\$1,731,894.74
CONSTRUCTION ENGINEERING	\$12,114.55	20	LABR	\$48,458.21	80	LABR				\$60,572.76
	\$77,978.82	100	LABR							\$77,978.82
TOTALS	\$436,472.32			\$1,433,974.00						\$1,870,446.32

**Attachment 2**

**CUY CEDAR ROAD**  
 COUNTY-ROUTE-SECTION  
 \_\_\_\_\_  
**112495**  
 PID NUMBER  
 \_\_\_\_\_  
**36939**  
 AGREEMENT NUMBER  
 \_\_\_\_\_  
 DUNS NUMBER

**DIRECT PAYMENT OF CONSULTANT**

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 consultant shall be paid directly to the consultant 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 consultant. In addition, the invoice must state the consultant’s name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the consultant and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the consultant, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (subrecipient). 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 City of University Heights request that all payments for the Federal/State share of the  
 (NAME OF LPA)

consultant costs of this agreement performed by \_\_\_\_\_  
 (CONSULTANT’S NAME)

be paid directly to \_\_\_\_\_  
 (CONSULTANT’S NAME)

VENDOR Name:	
Oaks Vendor ID:	
Mailing Address:	
LPA signature:	

LPA Name:	City of University Heights
Oaks Vendor ID:	
Mailing Address:	2300 Warrensville Center Road
	University Heights, Ohio 44118
ODOT Approval signature:	

**ORDINANCE 2021-42**

**INTRODUCED BY: COUNCILWOMAN BERRY**

**AN ORDINANCE ENACTING CODIFIED ORDINANCE SECTION 618.021 ENTITLED “TETHERING ANIMALS,” AND ENACTING CODIFIED ORDINANCE SECTION 618.022 ENTITLED “CONFINEMENT,” AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City wishes to regulate the practice of tethering animals, and wishes to eliminate circumstances in which animals are treated inhumanely or left unattended for excessive periods of time; and

**WHEREAS**, the City wishes to create clear regulations for the confinement of animals; and

**WHEREAS**, the City wishes to enact regulations to promote the proper treatment of animals and create clear guidelines for animal owners so as to eliminate nuisance conditions and prevent unsanitary or neglectful conditions harmful to both the animals and to the order and tranquility of the residential neighborhoods in which the animals are kept; and

**NOW, THEREFORE, BE IT ORDAINED by the Council of the City of University Heights, State of Ohio:**

**Section 1.** This Council hereby enacts Codified Ordinance Section 618.021 entitled “Tethering, Confinement and Neglect of Animals”, which shall read in its entirety as follows:

**618.021 TETHERING OF ANIMALS**

- (a) The owner of an animal may restrain an animal on a tether for a reasonable period, not to exceed three hours in a 24-hour period. The tether must not be less than twenty (20) feet or five times the length of the animal, must keep the animal within the owner’s property and must not touch a fence. Further, the animal must have access to shade, dry shelter, and tip-proof water supply.
- (b) Tethering is prohibited:
  - (1) Between the hours of 8:00 PM and 8:00 AM;
  - (2) If a heat advisory has been issued by a local or state authority or the National Weather Service;
  - (3) If a severe weather warning has been issued for the jurisdiction by the National Weather Service;
  - (4) If a tornado warning has been issued for the jurisdiction by the National Weather Service;
  - (5) If the tether is less than 20 feet, provide the tether does not allow the animal to touch the fence or cross the property line or cross into a public easement;
  - (6) If the tether is attached by means of pinchtype, prongtype, or choketype collar or if the collar is unsafe or is not properly fitted;
  - (7) If the tether inhibits the animal’s free movement or causes injury or entanglement;
  - (8) If the tether is made of a material that is unsuitable for the animal’s size and weight or that causes any unnecessary discomfort to the animal;
  - (9) If no owner or occupant is present at the premises.
- (c) Whoever violates this section is guilty of a minor misdemeanor on the first offense, a misdemeanor of the fourth degree on the second offense, and a misdemeanor of the first degree on the third or any subsequent offense. Notwithstanding the foregoing penalties, if an animal becomes sick or injured as a result of a violation of this section, then whoever violates this section is guilty of a misdemeanor of the first degree.

**Section 2.** This Council hereby enacts Codified Ordinance Section 618.022 entitled “Confinement of Animals”, which shall read in its entirety as follows:

**618.22 CONFINEMENT OF ANIMALS**

- (a) Confinement of animals shall be in accordance with the following:
  - (1) Dogs shall not be continuously confined to a garage as their primary residence.
  - (2) When outdoor temperatures reach freezing levels, all dogs, cats and small animals shall be provided adequate shelter, protected from the elements.
- (b) No person who shelters an animal from the elements by means of an animal shelter, a cage, or a pen shall fail to conform it to the following requirements:
  - (1) The shelter, cage or pen shall provide sufficient shade to allow the animal to escape the direct rays of the sun at all times;
  - (2) The shelter, cage or pen shall be regularly cleaned and sanitized;
  - (3) The shelter, cage or pen shall be waterproof;
  - (4) The shelter, cage or pen shall be insulated from the cold weather or heated to keep the animal warm and free from frostbite; and
- (c) Whoever violates this section is guilty of a misdemeanor of the first degree. The court may order the offender to forfeit the animal and may provide for its disposition, including, but not limited to, relinquishment of the animal to the society or association for the prevention of cruelty to and/or humane treatment of animals.

**Section 3.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

**Section 4.** This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, the emergency being the need to enact regulations that will address existing, persistent issues that create nuisance conditions and that result in the mistreatment of animals; wherefore, this ordinance shall be in full force and effect from and immediately after its adoption and approval by the Mayor. This ordinance shall take effect from and after the earliest time allowed by law.

**CITY OF UNIVERSITY HEIGHTS, OHIO**

\_\_\_\_\_  
**MICHAEL DYLAN BRENNAN, MAYOR**

**PASSED:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**KELLY M. THOMAS, CLERK OF COUNCIL**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**LUKE F. MCCONVILLE, LAW DIRECTOR**





**Starfish Computer**  
 Phone: 440-808-0468  
 Fax: 440-808-0470  
 24831 Lorain Road  
 North Olmsted, OH 44070

**Quote**  
 No.: **11987**  
 Date: 9/24/2021

Prepared for:  
 Michael D Brennan  
 City of University Heights  
 2300 Warrensville Center Road  
 University Hts., Ohio 44118

Prepared by: Patrick Hanrahan  
 Account No.: 12849  
 Phone: (216) 932-7800

Quantity	Description	UOM	Sell	Total
<b>Emergency Support and Service through 12/31/2021</b>				
<b>*Quantity of 3 is for months October, November, and December*</b>				
<b>Emergency Support and Service</b>				
3.00	20-Hour Block of AdHoc Network Support Services	HR	\$3,100.00	\$9,300.00
<b>Spam Filter</b>				
3.00	Spam Filter Monthly Services	EA	\$270.00	\$810.00
<b>Server, Desktop Patching, Monitoring and Antivirus</b>				
3.00	Server, Desktop Patching, Monitoring and Antivirus for 35 Desktops - Monthly Service	EA	\$780.00	\$2,340.00
<b>Loaner Switch and Server</b>				
3.00	Starfish Computer Loaner Switch and Server Montly Utilization	EA	\$300.00	\$900.00
<b>Backup/Disaster Recovery - Device is Property of Starfish Computer Corporation</b>				
3.00	Backup Disaster Recovery Monthly Service	EA	\$1,100.00	\$3,300.00
<b>Hybrid Cloud Backup</b>				
<b>Bare Metal Restore</b>				
<b>Advanced File Level Restore</b>				
<b>Inverse Chain Technology</b>				
<b>Instant On-Site Virtualization</b>				
<b>Instant Off-site Virtualization</b>				
<b>Screenshot Backup Verification</b>				
<b>Message Level Exchange Recovery</b>				
<b>CAPACITY</b>				
<b>Storage Capacity 6000GB (3000GB Usable)</b>				
<b>CLOUD</b>				
<b>Capacity 1 Year Data Retention</b>				
<b>Dual Bi-Coastal US Based SAS70 Rated Data Centers</b>				

Your Price:                       
**\$16,650.00**

Total:                       
**\$16,650.00**

Prices are firm until 10/15/2021

Terms:

**Prepared by:** Patrick Hanrahan, phanrahan@starfishcomputer.com

**Date:** 9/24/2021

**Accepted by:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Quote**

No.: **11987**

Date: 9/24/2021

**Disclaimer**

Prices are subject to change, error and availability. Prices do not include shipping and handling, if any. Return Policy: Returned parts will be charged a 20% restocking fee. Returns must be made within in 30 days of our order date. Special order parts are non-returnable.

Please fax signed quote to 440-808-0470 or email to sales@starfishcomputer.com so that your order can be placed. Thank you for your business.

## Transportation for Livable Communities Initiative (TLCI)



### NOACA is now accepting applications for its 2022 TLCI Implementation Program

Applications are being accepted through October 15, 2021 by 12 p.m.

Download the application, [here](#).

NOACA hosted a virtual workshop for applicants on September 16, 2021. Please review the following links to the PowerPoint presentation and recording:

[PowerPoint Presentation](#)

[Recorded Presentation](#)

Contact Jim Thompson, at [JThompson@mpo.noaca.org](mailto:JThompson@mpo.noaca.org) for more information about the application process and workshop.

*Note: NOACA is not soliciting new TLCI Planning Study projects for this funding round.*

## About TLCI

NOACA's Transportation for Livable Communities Initiative (TLCI) provides assistance to communities and public agencies for integrated transportation and land use planning and projects that strengthen community livability. TLCI advances the goals of NOACA's [Regional Strategic Plan](#) by focusing on the following objectives:

- Develop transportation projects that provide more travel options through complete streets and context sensitive solutions, increasing user safety and supporting positive public health impacts

- Promote reinvestment in underutilized or vacant/abandoned properties through development concepts supported by multimodal transportation systems
- Support economic development through place-based transportation and land use recommendations, and connect these proposals with existing assets and investments
- Ensuring that the benefits of growth and change are available to all members of a community by integrating principles of accessibility and environmental justice into projects
- Enhance regional cohesion by supporting collaboration between regional and community partners
- Provide people with safe and reliable transportation choices that enhance their quality of life

## Overview

The TLCI program consists of two components: (1) planning and (2) implementation.

1. Planning awards help fund planning studies that can lead to improvements to transportation systems and the neighborhoods they support.
2. Implementation awards help communities move forward with the development and installation of infrastructure from past completed livability studies. Project sponsors are encouraged to submit minimum implementation requests of \$100,000. However, projects requiring less than \$100,000 will be considered if they exemplify the goals of the TLCI program.

## Questions?

Contact us at 216-241-2414 or [noaca@mpo.noaca.org](mailto:noaca@mpo.noaca.org).

<b>INFO FOR SPONSORS:</b>	<b>PLANS, REPORTS &amp; MAPS:</b>
<ul style="list-style-type: none"> <li>• <a href="#">Eligibility &amp; Available Funding</a></li> <li>• <a href="#">Procurement and Administration</a></li> <li>• <a href="#">Planning Activities</a></li> <li>• <a href="#">Implementation Activities</a></li> <li>• <a href="#">Street Design Flexibility Guidelines</a></li> <li>• <a href="#">2020-21 TLCI Consultant List</a></li> <li>• <a href="#">Sample Resolution</a></li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">TLCI Plans and Reports</a></li> <li>• <a href="#">2006-2011 TLCI Evaluation</a></li> <li>• <a href="#">NOACA's Interactive GIS Map</a></li> </ul>





# Regional Transportation Investment Policy



Planning & Programming Transportation  
Projects for the NOACA Region

April 2019



<b>1) Title &amp; Subtitle</b> <b>Regional Transportation Investment Policy (revised April 2019)</b>	<b>2) NOACA Report No.</b> <b>TR-09-01</b>
<b>3) Author(s)</b> <b>NOACA Programming staff and other contributors.</b>	<b>4) Report Date</b> <b>April 2019</b>
<b>5) Performing Organization Name &amp; Address</b> <b>Northeast Ohio Areawide Coordinating Agency</b> <b>1299 Superior Avenue, Cleveland, OH 44114-3204</b> <b>Phone: (216) 241-2414 FAX: (216) 621-3024</b>	<b>6) Project Task No.</b> <b>6020</b>
	<b>7) NOACA Contract/Grant No. ODOT/FHWA</b>
<b>8) Sponsoring Agency Name &amp; Address</b> <b>Ohio Department of Transportation</b> <b>1980 W. Broad St., Box 899</b> <b>Columbus, OH 43216-0899</b>	<b>9) Type of Report &amp; Period Covered</b>
	<b>10) Sponsoring Agency Code</b>
<b>11) Supplementary Notes</b> <b>Federal funding for this project was provided by the Federal Highway Administration and administered by the Ohio Department of Transportation.</b>	
<b>12) Abstracts</b> <b>This document contains NOACA's policies and procedures regarding the planning, programming and prioritizing of federal-aid transportation improvements.</b>	
<b>13) Key Words &amp; Document Analysis</b> <b>A. Descriptors</b> <b>B. Identifiers/Open Ended Terms</b>	
<b>14) Availability Statement</b> <b>NOACA</b>	<b>15) No. Pages</b> <b>32</b>
	<b>16) Price</b>



# Regional Transportation Investment Policy

**NORTHEAST OHIO AREA WIDE COORDINATING AGENCY**

April 2019

ARMOND BUDISH  
BOARD PRESIDENT

GRACE GALLUCCI  
EXECUTIVE DIRECTOR

Preparation of this publication was financed by appropriations from the counties of Cuyahoga, Geauga, Lake, Lorain and Medina, and the City of Cleveland; the U.S. Environmental Protection Agency; and the U.S. Department of Transportation, Federal Transit Administration and Federal Highway Administration, in conjunction with the Ohio Department of Transportation.



## Table of Contents

<b>Table of Contents</b> .....	<b>3</b>
<b>I. Overall Policies</b> .....	<b>5</b>
A. NOACA's Transportation Plan Goals .....	5
B. Policy Statement.....	7
C. Access to Funds .....	7
D. Standing Committees .....	7
E. Community and Agency Plans.....	7
F. Use of Funding Targets .....	8
G. Urban Core Communities.....	8
H. Disadvantaged Communities .....	9
I. Environmental Justice Areas .....	10
J. The Five-Step Project Process (Summary).....	11
Step 1: Eligibility Determination and Project Planning Review .....	11
Step 2: Plan Amendment.....	12
Step 3: TIP Eligibility Determination.....	12
Step 4: TIP Amendment .....	13
Step 5: Lockdown List.....	13
<b>II. Project Application Policies and Procedures</b> .....	<b>13</b>
A. Federal-Aid Programs that Require a NOACA Application .....	13
Table 1: Federal-Aid Programs.....	14
B. Transportation Review Advisory Council (TRAC) Application Policies.....	17
C. Statewide Congestion Mitigation/Air Quality (CMAQ).....	17
D. Transportation Alternatives Program.....	18
E. Transportation for Livable Communities Initiative .....	19
F. Enhanced Mobility for Seniors and Individuals with Disabilities (5310) .....	20
<b>III. Planning Requirements and Guidance for Transportation Projects</b> .....	<b>20</b>
A. Financial Planning .....	20
B. NOACA Planning Requirements .....	21
<b>IV. Long-Range Transportation Plan and Transportation Improvement Program Update and Amendment</b> .....	<b>25</b>
A. Long-Range Transportation Plan .....	27
B. Transportation Improvement Program (TIP).....	28
C. NOACA Annual Priority List.....	29



<b>V. Financial Management and Other Policies.....</b>	<b>29</b>
<b>A. Project Funding Limit .....</b>	<b>29</b>
<b>B. Project Cost Increases .....</b>	<b>29</b>
<b>C. Management of Delayed or Abandoned Projects .....</b>	<b>31</b>
<b>D. Right-of-Way, Preliminary Engineering and Utility Rearrangements .....</b>	<b>31</b>
<b>E. Local Public Agency (LPA)-Administered Projects .....</b>	<b>32</b>
<b>F. TIP Monitoring Reports .....</b>	<b>32</b>
<b>G. Signal Preemption Planning Policy .....</b>	<b>32</b>
<b>H. New or Modified Highway Interchange Projects .....</b>	<b>32</b>

## I. Overall Policies

### A. NOACA's Transportation Plan Goals

The NOACA Strategic Plan, *Going Forward, Together*, was adopted in January 2015 after more than two years of efforts by the NOACA Board of Directors. The Strategic Plan embraces a vision statement for the region and identified goals, objectives and strategies related to the vision statement. The vision statement states:

*NOACA will STRENGTHEN regional cohesion, PRESERVE existing infrastructure, and BUILD a sustainable multimodal transportation system to SUPPORT economic development and ENHANCE quality of life in Northeast Ohio.*

The Vision Statement naturally lent itself to five goals, with supporting objectives, for which the Board developed as listed below.

#### Goal 1: Strengthen Regional Cohesion

- Foster collaboration on issues of transportation, air and water quality that will lead to greater regional cohesion and cooperation on other issues of regional concern.
- Work with governments in the region as well as state and federal authorities to remove barriers to joint development or maintenance of infrastructure by multiple governmental entities and by governmental and private entities.
- Work with governments in the region as well as state and federal authorities to promote cost sharing, purchasing coordination and consolidation of services to improve the efficiency and reduce the costs of developing and maintaining transportation and water infrastructure.
- Facilitate and promote the sharing of best practices for regional collaboration and cost sharing.
- Ensure infrastructure investments are planned and implemented to maximize transportation benefits across all impacted communities.
- Promote infrastructure investments that enhance the inter-relationships of communities within the region.

#### Goal 2: Preserve Existing Infrastructure

- Provide funding and other priority and preferences to infrastructure projects that:
- Preserve or maintain existing infrastructure that serves currently developed areas of the region.
- Facilitate improvements that connect existing activity centers and reinvigorate existing communities
- Facilitate development in higher density areas.
- Promote environmental sustainability.
- Devote approximately 90% of the region's transportation and infrastructure funding to maintain and preserve existing transportation investments.
- Create mechanisms to monitor the condition of existing regional transportation assets and evaluate the social equity/environmental justice impacts of infrastructure investments.
- Conduct benefit-cost analyses of all projects to insure that life-cycle costs and regional fiscal sustainability are considered.

Goal 3: Build a Sustainable Multimodal Transportation System

- Provide funding priority and other preferences with scoring criteria to projects that:
- Enhance and improve coordination for public transit, rail, pedestrian and bicycle transportation
- Improve access to regional job centers, employment opportunities, and city centers
- Facilitate intermodal transportation connections.
- Reduce energy use and improve air quality
- Reduce greenhouse gas emissions
- Reduce reliance on auto travel
- Demonstrate an adequate long-term funding stream for operation and maintenance.
- Integrate the control of stormwater, protection and improvement of water quality, and control of development in floodplains
- Ensure and/or enhance safety.
- Assure that the Regional Transportation Plan and TIP (Transportation Improvement Program) reflect a coherent commitment to a balanced multi-modal transportation system and to NOACA's strategic vision.
- Encourage transit-oriented development in higher density urban corridors and other higher density areas of the region and retrofitting transit oriented elements in appropriate lower density areas.
- Consider strategic abandonment or alternative provision of service for infrastructure elements that are underutilized or whose maintenance or reconstruction costs may exceed their benefit.
- Achieve levels of infrastructure investment that do not exceed the region's financial capacity.

Goal 4: Support Economic Development

- Provide funding priority and other preferences with scoring criteria to projects that:
- Provide for the movement of goods essential to the economic viability of the region
- Are consistent with state, regional and local economic development priorities, policies and strategies.
- Support the retention and expansion of Northeast Ohio area businesses in areas served by existing infrastructure and the attraction of new businesses to Northeast Ohio.
- Support the development of the region's manufacturing base, health care system, and other areas of regional economic strength and economic development focus.
- Ensure that NOACA's Board of Directors includes the expertise of representatives of the business, medical, higher education and non-profit sectors through their participation in the Community Advisory Council and Business Advisory Council.
- Conduct focused studies that identify ways in which NOACA can direct investments and actions to create realistic opportunities for job retention and economic development.
- Promote regional cooperation in the areas of economic development and job retention.
- Direct investments and actions to create realistic opportunities for job retention and economic development.

Goal 5: Enhance Quality of Life

- Provide funding priority and other preferences with scoring criteria to projects that:
- Promote the redevelopment of declining and abandoned areas

- Provide improved access to primary and secondary schools, colleges, universities and other educational opportunities
- Enhance the public's access to and enjoyment of the region's parks, cultural assets and recreational activities
- Preserve agricultural lands, open space and important habitat areas, woodlands, and wetlands
- Promote healthy and active living
- Make prudent and necessary infrastructure improvements to minimize the economic burden of transportation investments on the region's taxpayers.
- Ensure that safety factors are considered in the development of regional infrastructure.

## **B. Policy Statement**

This Regional Transportation Investment Policy (RTIP) is the NOACA Board of Directors' policy for planning, programming and prioritizing federal-aid transportation investments for the region. It is reviewed on a regular schedule and may be modified to reflect circumstances, such as changes in federal policies or revenues. All policy modifications will be presented to committees and Board for approval. Project sponsors will be notified of any policy changes that may affect their programs or project(s).

## **C. Access to Funds**

The NOACA Board of Directors believes that all project sponsors and geographical areas in the region should have sufficient access to funds to improve and maintain the transportation infrastructure. Consequently, the Board of Directors strives to plan, program and prioritize projects on an equitable basis.

## **D. Standing Committees**

NOACA is responsible for directing and managing the federal funds it receives.<sup>1</sup> Because of the complexities of the federal accounting system and Ohio Department of Transportation (ODOT) administrative policies, the NOACA Board of Directors authorizes the appropriate Standing Committees (Committee(s)), in accordance with the NOACA Code of Regulations, to help direct and manage the agency's planning and financial responsibilities. Committee decisions are reported to the Board of Directors.

## **E. Community and Agency Plans**

At a minimum, communities must notify NOACA of all projects that involve a road on the Federal-Aid System (FAS), regardless of the funding source to be used for said project. This is due to federal requirements that MPOs be aware of all changes to the FAS, regardless of the funding source for those changes.

Improvements to the federal-aid transportation system should logically flow from an open and comprehensive planning process. Many communities create city-wide or corridor plans that include proposed improvements. To facilitate the planning process,

---

<sup>1</sup> See Appendix 3 for information on how federal funds flow to NOACA.

communities and agencies are encouraged to submit their community-approved plans to NOACA for certification.

City-wide or corridor plans may be submitted to NOACA for review by staff.<sup>2</sup> They will be presented to NOACA's committees with recommendations. Annually, the NOACA Board of Directors will certify plans as helping to achieve the goals of NOACA's Transportation Plan. Projects drawn from a certified plan may flow more easily through the five-step process, described below.

**F. Use of Funding Targets**

The NOACA Board of Directors may set funding targets annually. The funding targets may be related to specific geographical areas, transportation modes, programs or projects. Funding targets are not entitlements; they are tools to promote regionalism and encourage specific types of investment. (Federal regulations explicitly prohibit "entitlement" sub-allocations.)

**G. Urban Core Communities**

The NOACA Urban Core Communities Policy seeks to foster reinvestment in defined urban core areas while minimizing a currently increasing regional infrastructure cost burden given stagnant regional population growth and outstanding needs within areas of existing infrastructure. The policy, available on the NOACA website, designates Urban Core Communities based on community characteristics that shape the urban qualities of a place and develops specific programs for these communities.

**Designated Urban Core Communities:**

Bay Village	Fairview Park	Parma Hts.
Bedford	Garfield Hts.	Rocky River
Bedford Hts.	Lakewood	Seven Hills
Berea	Linndale	Shaker Hts.
Brook Park	Lorain	Sheffield Lake
Brooklyn	Lyndhurst	South Euclid
Cleveland	Maple Hts.	Timberlake
Cleveland Hts.	Mayfield Hts.	University Hts.
East Cleveland	Mentor-on-the-Lake	Warrensville Hts.
Eastlake	Newburgh Hts.	Wickliffe
Elyria	North Olmsted	Willoughby
Euclid	Painesville	Willowick
Fairport Harbor	Parma	

Benefits to designated Urban Core Communities include:

- Preliminary Engineering Program:
  - Urban core communities are eligible to apply for assistance for preliminary engineering for their transportation improvement. The Board of Directors shall

<sup>2</sup> NOACA does not certify individual project plans.



approve the not-to-be-exceeded amount, dependent on the project and available funds.

- Communities that receive federal aid for preliminary engineering must commit in writing that the project will advance to construction within an agreed upon time. If the project does not advance, by federal law, the community will be required to pay back the federal funds.
- Right-of-Way Program:
  - Urban core communities may apply for federal funds for right of way, without the initial \$50,000 right of way investment
- Toll Credits:
  - Projects located within designated Urban Core communities are eligible for 90% NOACA funding participation using Toll Credits, if available.

## H. Disadvantaged Communities

Similar to the Urban Core Communities Policy, the Disadvantaged Communities Policy provides a framework to ensure that the benefits of NOACA's regional transportation investments are shared by all socioeconomic groups. This policy was developed separately from the Urban Core Communities Policy to serve a subset of urban communities facing financial hardship due to their population composition.

Because financially challenged communities often find it difficult to provide the local match that's needed to use federal funding for transportation projects, the Disadvantaged Communities Policy helps fill that gap. Designated Disadvantaged Communities must first be designated Urban Core Communities.

Qualifying criteria are also based on various nondiscrimination laws and executive orders. In order to be designated a Disadvantaged Community, the local community must:

- Be a designated Urban Core Community as defined by the NOACA Urban Core Communities Policy
- Meet a scoring threshold based on up to five criteria:
  - Minority population
  - Low-income population
  - Elderly population
  - Population of individuals with disabilities
  - Population of individuals with low English proficiency

### Designated Disadvantaged Communities:

Bedford	Garfield Hts.	Parma Hts.
Brooklyn	Lakewood	Seven Hills
Cleveland	Linndale	Shaker Hts.
Cleveland Hts.	Lorain	Warrensville Hts.
East Cleveland	Maple Hts.	
Elyria	Newburgh Hts.	
Euclid	Painesville	
Fairport Harbor	Parma	

Benefits to qualifying communities include:

- All benefits available to designated Urban Core Communities
- Available use of toll credits to reduce local match for projects to as little as zero percent

## I. Environmental Justice Areas

The NOACA Environmental Justice Areas Policy designates Environmental Justice Areas based on the socioeconomic composition of a community and develops specific programs for these communities to best promote the principles and policies of the U.S. Department of Transportation, Title VI of the Civil Rights Act, and Presidential Executive Order 12898.

The policy supports reinvestment in Environmental Justice Areas and ensures such communities are not disproportionately affected. The policy can be found on the NOACA website.

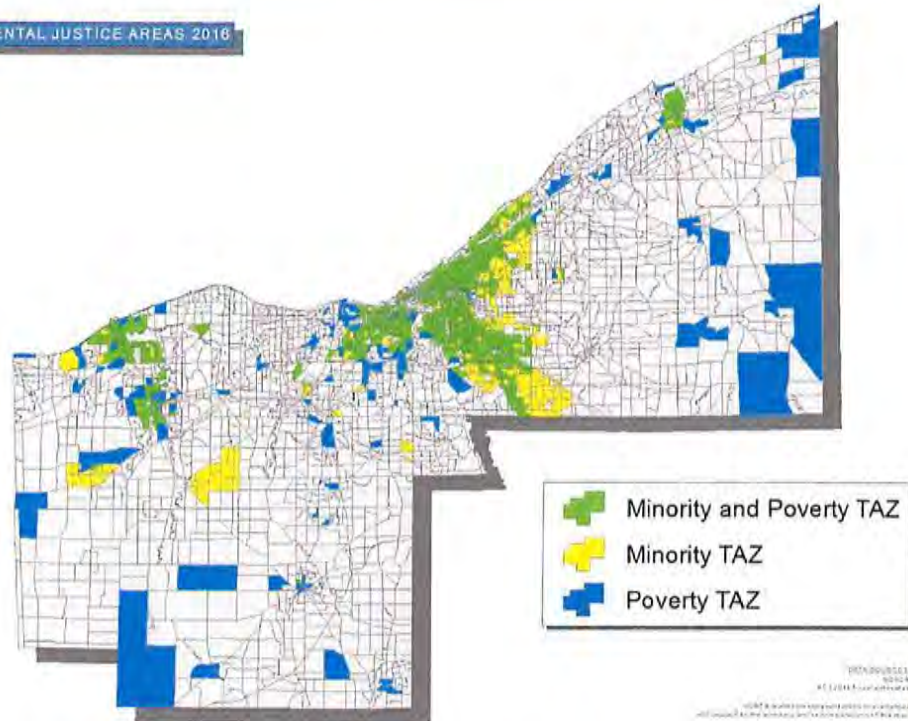
Note that this policy refers to areas, not communities. NOACA's Environmental Justice Areas are not based on political jurisdictions, but on traffic analysis zones (TAZs). A TAZ is an amalgamation of Census Blocks but is smaller than a Census Tract, so it allows the agency to conduct analyses at the neighborhood level. The TAZ approach allows NOACA to pinpoint concentrations of minority and low-income populations where they live throughout the region and not just in concentrated communities.

Any project in a designated Environmental Justice Area is eligible for the benefits of this program. In order to be designated an Environmental Justice Area, the area must contain one or both of the following:

- A percentage of minority population at or above either the regional average or the national average (whichever is lower).
- A percentage of low-income population at or above either the regional average or the national average (whichever is lower).

*The resulting analysis has identified the following Transportation Analysis Zones of EJ concern:*

ENVIRONMENTAL JUSTICE AREAS 2016



These criteria constitute the strict federal definition of Environmental Justice populations. The list and map of designated Environmental Justice Areas shall be updated periodically based on Census population data.

Benefits to designated Environmental Justice areas include:

- All benefits available to designated Urban Core and Disadvantaged Communities
- Available use of toll credits to reduce local match for projects to as little as zero percent

## J. The Five-Step Project Process (Summary)

NOACA employs a five-step process for project planning, programming, prioritization and eventual construction/implementation. For more information on each step, see chapters II, III and IV.

### Step 1: Eligibility Determination and Project Planning Review

All proposed projects must complete the appropriate application for federal funds. Application cycles vary based on type of funds and fund availability. Applications are accepted only for the fiscal years listed in the specific application packet. Instructions and guidance on how to submit applications for the various federal funding categories are listed in Chapter II and on NOACA's website.



If an application is determined eligible, it will be processed through Project Planning Review (PPR). Upon successful completion of PPR, project sponsors will receive a NOACA Board of Directors' resolution saying that the project is eligible to be placed on the Transportation Plan, contingent upon the sponsors addressing planning issues that may have been identified during PPR. Project sponsors must commit in writing that they will work to address PPR issues. Information on fulfilling planning requirements and guidance is contained in Chapter III and on NOACA's website.

The NOACA staff will conduct annual coordination meetings to determine project status.

## Step 2: Plan Amendment

Sponsors of plan-eligible projects must provide evidence they have addressed PPR recommendations or conditions for approval. The project will not be advanced until the Planning and Programming Committee concurs that relevant issues are being adequately addressed.

Upon successful review, the project sponsor will receive a Board resolution that the project is amended to NOACA's Transportation Plan. (Being on the Transportation Plan indicates that the project will be implemented within the timeframe of the plan. It does not prioritize a sponsor's project in relation to other projects).

## Step 3: TIP Eligibility Determination

Through annual meetings with sponsors, NOACA will monitor the development of projects. To be eligible for programming onto the Transportation Improvement Program (TIP), a NOACA-funded project must successfully complete scoping review by staff and committees. This scoping review will determine the readiness status of the project and verification that planning issues identified during PPR were addressed. The following criteria will guide TIP project readiness status:

- All conditions resulting from Project Planning Review, as applicable, have been addressed to the satisfaction of the appropriate NOACA committees, subcommittees and/or councils;
- Final project scope has been approved and is consistent with NOACA goals;
- Implementation schedule is realistic and accounts for all necessary project development milestones; and
- Project funding plan is committed for the year of implementation and cites reasonably expected revenues to be available for the demonstration of fiscal constraint.

Guidance regarding fulfilling this step and submission of appropriate documentation is listed in Chapters III and IV and on NOACA's web site. Upon successful completion of this step, a project sponsor will receive notification that the project is eligible to be placed on the TIP. This means the project is now ready to be programmed and prioritized for implementation.

## Step 4: TIP Amendment

The Planning and Programming Committee will assess TIP-eligible projects in relationship to projected federal funds, regional priorities and targets.

The Board of Directors will determine NOACA's not-to-be-exceeded federal share (funding cap) for the project. The project sponsor must agree, in writing, that it will abide by the funding cap, barring special circumstances.<sup>3</sup>

Upon receipt of funding cap agreements, NOACA staff will develop a list of projects to be programmed and will submit it to the Planning and Programming Committee and Board for approval. Following Board approval, a project sponsor will receive a resolution that the project is amended to NOACA's TIP.

Information regarding this step and submission of appropriate documentation is listed in Chapter III and on NOACA's website.

## Step 5: Lockdown List

NOACA will develop a lockdown list (Annual Priority List) of projects for the upcoming state fiscal year (July 1-June 30). At this time, project sponsors must provide verification that their projects can award a contract (encumber funds) within the lockdown year. NOACA staff develops the draft lockdown list in coordination with external program managers for committee and Board approval.

## II. Project Application Policies and Procedures

### A. Federal-Aid Programs that Require a NOACA Application

There are a number of federal-aid programs that provide funding for transportation improvements. Following is a table listing programs that require a NOACA approval for amendment to the long-range transportation plan (LRTP) and Transportation Improvement Program (TIP).

---

<sup>3</sup> See Chapter V for policies regarding requesting funds above the funding cap.

Table 1: Federal-Aid Programs

Program/Fund	Funding Source	Selected By	Eligible Projects	Eligible Applicants	Contact Information
NOACA Surface Transportation Block Grant (STBG)	FHWA/ODOT	NOACA Board of Directors	Roadway preservation, reconstruction and capacity; transit vehicles and other capital; bicycle; safety; <sup>4</sup> planning on the federal-aid system	Municipalities, county governments, and transit agencies within the NOACA region. <sup>5</sup>	NOACA: <a href="http://www.noaca.org">www.noaca.org</a> 216-241-2414
Statewide Urban Congestion Mitigation and Air Quality (CMAQ)	FHWA/ODOT	Statewide OARC/NOACA Board of Directors	Must improve air quality: transit vehicles and operations of new or expanded service; travel demand management; emission reduction programs; signals, etc.	Municipalities, county governments and transit agencies within the NOACA region. <sup>6</sup>	NOACA: <a href="http://www.noaca.org">www.noaca.org</a> 216-241-2414
NOACA Transportation Alternatives Program (TAP)	FHWA/ODOT	NOACA Board of Directors	Pedestrian, bicycle, community improvement activities, safe routes for non-drivers, safe routes to school, scenic viewing areas, environmental, historic and archeological; must be related to transportation.	Municipalities, county governments, transit agencies and park districts within the NOACA region.	NOACA: <a href="http://www.noaca.org">www.noaca.org</a> 216-241-2414

<sup>4</sup> Safety funds may be available for projects on any roadway.

<sup>5</sup> NOACA itself may apply for STBG for planning.

<sup>6</sup> NOACA itself may apply for CMAQ funds.

Regional Transportation Investment Policy

Program/Fund	Funding Source	Selected By	Eligible Projects	Eligible Applicants	Contact Information
NOACA Transportation for Livable Communities (TLCI)	NOACA STBG	NOACA Board of Directors	Planning and implementation projects consistent with TLCI objectives	Municipalities, county governments and transit agencies within the NOACA region.	NOACA: <a href="http://www.noaca.org">www.noaca.org</a> 216-241-2414
NOACA Enhanced Mobility for Seniors and Individuals with Disabilities (5310)	FTA	NOACA Board of Directors	Enhances mobility for seniors and persons with disabilities by providing funds for programs that serve the special needs of transit-dependent populations beyond traditional public transportation services and Americans with Disabilities Act (ADA) complementary paratransit services	Private nonprofit organizations; State or local government authorities; public operators of public transportation services; private operators of public transportation services within the Cleveland urbanized area	NOACA: <a href="http://www.noaca.org">www.noaca.org</a> 216-241-2414
ODOT Federal Aid Highway Programs	FHWA/ODOT	ODOT; in consultation with the NOACA Board of Directors	Roadway projects on federal-aid facilities where ODOT is the responsible agency (e.g., interstates and state routes)	ODOT	ODOT District 3 and District 12 offices

**Regional Transportation Investment Policy**

<b>Program/Fund</b>	<b>Funding Source</b>	<b>Selected By</b>	<b>Eligible Projects</b>	<b>Eligible Applicants</b>	<b>Contact Information</b>
State of Ohio's Transportation Review Advisory Council (TRAC)	Federal/State	TRAC, in consultation with the NOACA Board of Directors	Major new transportation projects that cost \$12 million or more and add capacity or reduce congestion	ODOT, Municipalities, county governments and transit agencies	Ohio TRAC website
County STBG, Bridge (LBR) and Safety (HSIP)	FHWA/ODOT	County Engineers Association in consultation with the NOACA Board of Directors	Roadway, bridge and safety projects on federal-aid facilities where county engineers are the responsible agencies	County Engineers	County Engineers Association of Ohio

Note this table may be modified due to changes in programs or funding. Please see the NOACA website for the most current table or contact NOACA staff.

## **B. Transportation Review Advisory Council (TRAC) Application Policies**

Project sponsors sometimes apply to the State of Ohio's Transportation Review Advisory Council (TRAC) to supplement financing for a major transportation improvement. When TRAC announces an application round, the Transportation Subcommittee will set up application and review procedures. Project sponsors with proposed projects not currently on NOACA's Transportation Plan will be required to complete an application for agency review and prioritization to TRAC.

## **C. Statewide Congestion Mitigation/Air Quality (CMAQ)**

The federal Congestion Mitigation and Air Quality (CMAQ) funding allocation is established by formula to ODOT based on air quality non-attainment and maintenance area populations. The program is managed by the Statewide CMAQ Committee, comprised of representatives of the eight large urban areas of Ohio—Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo and Youngstown.

CMAQ funds may be used to establish new or expanded transportation projects or programs that reduce emissions, including capital investments in transportation infrastructure, congestion relief efforts, vehicle acquisitions, diesel engine retrofits and other capital projects. Projects that add new capacity for single-occupancy vehicles (SOVs), however, are ineligible for CMAQ funding unless construction is limited to high-occupancy vehicle (HOV) lanes.

Operating projects or programs are also eligible, but are limited to new transit, commuter and intercity passenger rail services, intermodal facilities and travel demand management strategies, including traffic operation centers, inspection and maintenance programs, and the incremental cost of expanding these services. A full list of eligible project types with descriptions is available on the NOACA website. NOACA will submit eligible CMAQ projects first to the statewide program prior to considering it for STBG or TAP program funding.

The CMAQ program provides 80 percent of total eligible project costs associated with non-infrastructure activities and operating costs; and preliminary development, detailed design, right of way acquisition and construction costs for infrastructure-type projects. The minimum local share is 20 percent and must be provided from local, state or other non-federal sources. Costs associated with a non-CMAQ funded phase are not considered part of the local share.

Project sponsors who request Statewide CMAQ Program funds are required to complete an application that will compete against other large urban area projects statewide. In addition to the general application information, eligible sponsors are required to submit any additional information needed by NOACA staff to assess their proposed project technically against program goals. NOACA staff will coordinate regional project applications for review, scoring and prioritization and will submit applications and priority ranking to the Statewide CMAQ Committee for evaluation and determination of project funding recommendations.

If a proposed CMAQ project is selected for funding through the statewide program, it is eligible to be placed on NOACA's Transportation Plan and TIP. The overall status of the statewide CMAQ funds availability will be a determining factor regarding a project's placement on the plan and TIP. Projects may be amended to the plan quarterly in accordance with the planning process established for non-NOACA-controlled fund sources. NOACA will monitor project delivery and maintain the plan and TIP in accordance with the Statewide CMAQ Committee program management decisions.



## Project Review and Project Scoring:

After initial application review, all proposed CMAQ projects are scored according to the following statewide program criteria:

1. **Project Type** - Recognized project types with proven emissions-reducing benefits
2. **Cost Effectiveness** - Project's ability to reduce emissions (HC/NO<sub>x</sub>/PM<sub>2.5</sub>) per CMAQ dollar invested
3. **Other Benefits** - Impacts to Safety, Freight, Fixed Route Transit, Bike/Pedestrian and Environmental Justice Areas
4. **Existing Quality of Service** - Current operating level of service of the facility
5. **Positive Impact on Quality of Service** - Projected level of service the facility will operate post project
6. **Status of Project** - Project readiness, status of project development
7. **Non-Federal Funds Commitment** - Significance of non-CMAQ funding contributed to the project
8. **Regional Priority** - MPO priority given up to four projects
9. **Past Performance** - Past performance of the project sponsor regarding project delivery

NOACA staff will prepare a draft CMAQ project list using the results of the scoring system noted above. Eligible projects will be submitted to the Statewide Committee and be reviewed according to their score and available funds.

## D. Transportation Alternatives Program

NOACA has specific policies for Transportation Alternatives Program (TAP) funds due to their unique nature. Project sponsors should consult the NOACA website or contact NOACA staff if they have questions about the program.

TAP Eligible Activities include:

- Facilities for pedestrians, bicyclists, and other non-motorized forms of transportation
- Infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs. Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to:
  - Address stormwater related to highway construction or due to highway runoff
  - Reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among habitats
- Recreational trails program under section 206 of Title 23
- Safe Routes To School program eligible projects and activities listed at section 1404(f) of the SAFETEA-LU
- Planning, designing or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways
- Conversion and use of abandoned railway corridors for trails
- Scenic turnouts, overlooks and viewing areas

### Transportation Alternatives Program Requirements:

- A. Awards to individual projects are limited to \$1.5 million in TAP funds, although additional federal funds may be applied to the same project if local match requirements are met. If a project is considered to be of exceptional regional significance, NOACA's Finance and Audit Committee

may recommend to the Board of Directors that a higher TAP limit be applied to the individual project.

- B. TAP awards will be capped at their initial award amount for the life of the selected project. A request for additional funding will not be processed.
- C. All TAP type projects and project elements must demonstrate sufficient coordination with interested affected parties prior to being placed on the TIP. A letter of support from the affected entities will generally demonstrate sufficient coordination. The following specific forms of coordination must occur:
  - a. Transit Coordination
    - i. A transit agency-sponsored project or project element must be coordinated with the unit of government (e.g., city) in which it is located.
    - ii. A project or project element on or along a designated transit route must be coordinated with the transit agency responsible for the designated route.
  - b. Inter-Governmental Coordination
    - i. A project or project element on an interstate or U.S. route must be coordinated with the Federal Highway Administration (FHWA), ODOT, the county engineer for the county in which the project is located and the unit of government in which it is located.
    - ii. A project or project element on a state route must be coordinated with ODOT, the county engineer for the county in which the project is located and the unit of government in which it is located.
    - iii. A project or project element on a county route or lower route classification must be coordinated with the county engineer and the unit of government in which the project is located.
    - iv. A project or project element in a town or city center or its equivalent must be coordinated with adjacent property owners, the county administration, the county engineer and the administration for the unit of government in which the project is located.
  - c. Other Coordination
    - i. A project or project element in a neighborhood with a recognized neighborhood association must be coordinated with the neighborhood association.
    - ii. A project or project element in a neighborhood with no recognized neighborhood association must provide evidence of at least one public meeting with neighborhood residents and a summary thereof.

## E. Transportation for Livable Communities Initiative

NOACA's Transportation for Livable Communities Initiative (TLCI) helps communities in Northeast Ohio obtain federal funding and technical assistance for planning and transportation implementation projects that strengthen community livability. The TLCI consists of the following components:

- **Planning Study and Implementation Grant Program:** Provides federal funding to conduct or contract for the planning and implementation of transportation improvements that advance the Initiative's objectives. By policy, the NOACA Board of Directors allocates \$2 million each fiscal year for the program, up to \$500,000 for planning studies and \$1.5 million for implementation projects.
- **NOACA Staff TLCI:** As an alternative to the TLCI grant program, NOACA will offer staff assistance for planning and traffic-related studies for small to medium-scale transportation projects. NOACA staff will work with communities to identify projects and corridors that will be prioritized for assistance.



TLCI Study and Implementation projects are eligible for 100% NOACA funding participation, using Toll Credits. NOACA staff TLCI plans are performed by NOACA staff at no cost to the project sponsor.

Project sponsors will be required to complete a NOACA TLCI application for study or implementation projects. Applications are accepted only during announced cycles. Please see the NOACA website or contact NOACA staff for more information.

## **F. Enhanced Mobility for Seniors and Individuals with Disabilities (5310)**

NOACA has been designated the administrator of federal funds for the Enhanced Mobility for Seniors and Individuals with Disabilities (5310) program, which is intended to enhance mobility for seniors and persons with disabilities by providing funds for programs to serve the special needs of transit-dependent populations beyond traditional public transportation services and Americans with Disabilities Act (ADA) complementary paratransit services.

Funds are apportioned for urbanized and rural areas based on the number of seniors and individuals with disabilities. The participating federal share for capital projects (including acquisition of public transportation services) is 80 percent. The participating federal share for operating assistance is 50 percent. The local share may be derived from other federal (non-DOT) transportation sources or the Federal Lands Highways Program under 23 U.S.C. 204 (as in the former Section 5310 program). Eligible entities include states or local government authorities, private nonprofit organizations and operators of public transportation that receive a grant indirectly through a recipient.

Federal Law requires that projects requesting funding under the Enhanced Mobility for Seniors and Individuals with Disabilities (Section 5310) programs be consistent with the goals of the Coordinated Public Transit-Human Services Transportation Plan for Northeast Ohio. A copy of the plan is available on the NOACA website.

Applications are accepted only during announced cycles. Please see the NOACA website or contact NOACA staff for more information regarding the next cycle

## **III. Planning Requirements and Guidance for Transportation Projects**

Below are the project planning, financial, multimodal, environmental and economic development requirements for applications and projects wanting to advance to transportation plan or TIP amendment status.

### **A. Financial Planning**

#### **Financial Planning Requirements:**

Applications must contain the following financial information:

- A line item estimate of the total cost of the proposed project
- Desired federal funding amount
- Local match amount

Applicants who request more than \$5 million of NOACA-controlled funds may be required to submit additional information.

**Financial Planning Guidance:**

Reasonable cost estimates should be developed using the Ohio Department of Transportation's preliminary cost estimating procedure or some similarly detailed cost estimating procedure.<sup>7</sup>

Federal-aid transportation funds are not grant programs. They operate on a reimbursement basis.

**B. NOACA Planning Requirements**

NOACA staff and committees use the following planning requirements during PPR to evaluate proposed projects and develop conditions to be addressed prior to advancement to the NOACA TIP.

Project sponsors must demonstrate compliance with the following planning requirements throughout project development, construction, maintenance and operation.

**STRENGTHEN regional cohesion**

- (1) NOACA will prioritize resources for projects that are the result of regional collaboration, providing far reaching cross-jurisdictional benefit. Sponsors are encouraged to develop projects that promote partnership in the funding, implementation and maintenance of projects.
- (2) Proposed projects must be identified as a need in and be consistent with adopted planning documents such as a master plan, capital improvement program, NOACA's plans or other special area study.
- (3) Project sponsors must demonstrate coordination with all affected parties responsible for the construction, maintenance and operation of the facility, including, but not limited to, local jurisdictions, ODOT districts, county engineers, transit agencies, utilities and sewer districts and other service providers affected by the project.
- (4) Project sponsors must demonstrate that the project is a result of thorough public involvement and consensus. Project sponsors are required to ensure the participation of all potentially affected communities in the decision-making process, including review by adjacent jurisdictions and other stakeholders that would be impacted by the project.

**PRESERVE existing infrastructure**

- (5) NOACA will prioritize resources for projects that preserve or enhance currently developed areas of the region, connect existing activity centers, reinvigorate existing communities, ensure efficient freight movement and support development in higher-density areas.
- (6) Projects must meet established NOACA preservation targets. Project sponsors are advised that when identifying local priority projects, federal funding is prioritized for preservation and system enhancement projects that create regional and national benefits.
- (7) Projects are encouraged to align different preservation needs within one project; including but not limited to modal improvements, utilities, sewer work, stormwater and green infrastructure.
- (8) The NOACA share for highway capacity projects or highway projects with capacity elements (e.g., new roadways, major widening) is limited to up to 50 percent funding participation, requiring a 50 percent non-federal match.

---

<sup>7</sup> Available at <http://www.dot.state.oh.us/Divisions/Planning/Estimating>.

- (9) Projects that meet the Ohio Transportation Review Advisory Council (TRAC) policy criteria must be approved as a TRAC priority project (Tier I, II or III) prior to being eligible for NOACA-administered funds.

**BUILD a sustainable multimodal transportation system**

- (10) NOACA will prioritize resources toward projects that ensure the safe and efficient operation of the roadway and corridor for all users, including, but not limited to, pedestrians, bicyclists, users of mass transit, people with disabilities, the elderly, motorists, freight providers, emergency responders and adjacent land users.
- (11) Sponsors are required to consider bicycles, pedestrians and transit access improvements in the planning and design of their proposed project. In particular, sidewalks, bike facilities, street crossings (including over- and under-crossings), pedestrian signals, signs, street furniture, transit stops and facilities, and all connecting pathways should be designed, constructed, operated and maintained so that all modes and pedestrians, including people with disabilities, can travel safely and independently. The project may not warrant consideration if one or more of the following conditions are met:
- The project is limited exclusively to resurfacing or other maintenance type activities. In these cases pavement striping for bike lanes, cross walks, signage or other low-cost bicycle and pedestrian countermeasures may still be recommended.
  - Bicyclists and pedestrians are prohibited by law from using the transportation corridor. In this instance, a greater effort may be necessary to accommodate bicyclists and pedestrians as an alternate to the transportation corridor.
  - The cost of establishing bikeways or walkways that meet applicable standards would exceed 20% of the cost of the larger transportation project. This percentage is not a target for expenditure; it is a benchmark for assessing when provision of bicycle or pedestrian facilities is too costly for consideration.
  - There are extreme topographic or natural resource constraints.
  - The project is located on a low-volume roadway that is not projected to carry significant bicycle or pedestrian usage, or that does not carry or provide access to fixed route transit service.
- (12) The design and development of the transportation facility should improve conditions for all users by:
- a. Designing context-appropriate facilities in accordance with available standards and guidance that best ensures safety and efficient operation for all users. The design of facilities for bicyclists, pedestrians and transit facilities should follow recognized design guidelines and standards, such as the AASHTO Guide for the Development of Bicycle Facilities, AASHTO's Policy on Geometric Design of Highways and Streets, the ITE Recommended Practice "Design and Safety of Pedestrian Facilities," Americans with Disabilities Act Accessibility Guidelines and other recognized and acceptable design publications.
  - b. Prioritizing safety and acceptable levels of service equally for all modes. Safety improvements for any one mode will not be minimized to achieve improved level of service for any one mode.



- c. Designing intersections and interchanges to accommodate bicyclists, pedestrians and transit riders in a manner that is safe and accessible.
- (13) Sponsors must demonstrate how the project advances multimodal connectivity and access to adjacent land uses and destinations within the corridor.
- (14) The project sponsor must anticipate likely future demand for all modes and not preclude the provision of future improvements.

**SUPPORT economic development**

- (15) NOACA will prioritize resources for projects that support economic development where the existing infrastructure system can accommodate the development, with special emphasis given to projects that involve designated intermodal connectors. If a project is expected to increase freight traffic, the project sponsor must demonstrate the effect this increased volume will have on the facilities adjacent to the proposed project.
- (16) Project sponsors must demonstrate how their project contributes to closing the regional job-housing disconnect by identifying affected populations, job centers served by the transportation project and multimodal access provided by the corridor and by specifying improvements to the corridor.
- (17) To demonstrate the benefits from economic development that is anticipated as a result of the corridor improvements, project sponsors are required to submit a cost-benefit analysis. The analysis should illustrate anticipated revenue from development and documenting new jobs that will be created for the region and how residents of the NOACA region as a whole are made better off as a result of the project. Projects providing a stated commitment from tax-paying or job creating entities will be prioritized over speculative development.
- (18) Where system expansion is necessary to accommodate economic growth, project sponsors are required to leverage the benefits that private entities will accrue due to the construction of the project (through public-private partnerships, tax increment financing, business improvement districts or other best practices) to cover construction and maintenance costs.

**ENHANCE quality of life in Northeast Ohio**

- (19) NOACA will prioritize resources for projects that improve safety, reduce congestion, reduce environmental impacts and support multimodal transportation options to enhance livability for all users on or adjacent to the transportation system.
- (20) Project sponsors must address all existing or projected safety issues for all users of the transportation facility. The proposed project must contain appropriate countermeasures that mitigate identified safety issues.
- (21) Project sponsors are required to coordinate and comply with NOACA's water quality management plan.
- (22) Project sponsors must demonstrate how environmental issues will be addressed throughout the design, construction and operation of the project. This includes, but is not limited to, water quality, air quality, environmental justice and other human and natural environmental issues such as archeological and historical preservation, energy conservation and noise.
- (23) The project must support appropriate best management practices to mitigate stormwater and flooding, and manage wastewater. Thus, project sponsors must demonstrate how the project will handle stormwater control, mitigation and vegetation during design, construction and post-construction long-term performance (operation and maintenance). Sponsors may use the Ohio

Department of Natural Resources Rainwater and Land Development Manual to demonstrate sound design practices.

- (24) Project sponsors are required to implement context-sensitive solutions, including but not limited to, historic and cultural districts, along scenic rivers and parks, for special view sheds, and if the impacted communities have specific plans for the corridor.
- (25) Project sponsors are required to avoid, minimize or mitigate disproportionately high and adverse human health, socioeconomic and environmental effects of transportation projects on minority populations and low-income populations (Executive Order 12898).

## IV. Long-Range Transportation Plan and Transportation Improvement Program Update and Amendment

These policies guide the periodic update and amendment of regional transportation projects and programs to the Long-Range Transportation Plan and the Transportation Improvement Program (TIP).

One of NOACA's primary functions is to develop and update the Plan and the TIP, in compliance with metropolitan planning requirements established in federal regulations (23 U.S.C. §134 and 23 CFR §450). The Plan, updated every four years, addresses current and future transportation demand for a 20-year horizon. It includes both long- and short-range strategies that support the maintenance and investment of a multimodal transportation system to facilitate the safe and efficient movement of people and goods. The TIP, updated every two years, is a four-year program that reflects and implements the investment priorities established in the Plan.

All proposed transportation projects for which federal funds are planned for expenditure must be listed in the Plan and the TIP prior to implementation. NOACA must amend or modify the Plan and TIP as needed to include new projects or revise existing programmed projects.

This policy directs an approach for the comprehensive update and amendment to the Plan and TIP that allows for the evaluation and prioritization of projects proposed for improvement to the region's transportation system. The intent is for projects to advance from the Plan to the TIP based on established criteria and processes better to inform project planning and use of resources.

### Project Planning Requirements

All projects and programs proposed for update or amendment to the Plan and TIP must be evaluated in accordance with the following planning requirements, as defined in this policy and associated guidance.

- I. **Planning Policies and Guidance** – Project planning, financial, multimodal, environmental and economic development requirements for projects being incorporated into the Plan or TIP. These requirements are contained in Chapter III.
- II. **Project Planning Review (PPR)/Intergovernmental Review and Consultation (IGRC)** – PPR and IGRC procedures, as defined herein, must be completed for all Major Projects identified for the Plan, for all Minor Projects proposed for years five and six of the Plan and projects proposed for concurrent Plan and TIP amendment. Major and Minor Projects are defined below:

**Major Projects** – Projects that meet any of the following criteria:

- i. Estimated to cost \$12 million or more
- ii. Require Air Quality Conformity Analysis
- iii. Meet the federal definition of Regionally Significant project

**Minor Projects** – All other projects not meeting the definition of a Major Project

Projects already on the Plan or TIP that request a change of scope or significant cost increase (greater than 20 percent) must go through PPR again.<sup>8</sup>

The PPR procedure fulfills the following goals:

---

<sup>8</sup> Project sponsors may appeal this 20 percent requirement if it can be shown that the cost increases were a result of an increase in material costs or inflation.

1. Determines if a proposed project helps to achieve one or more of the Transportation Plan goals to enhance the region's transportation system and quality of life;
2. Assesses if proposed projects fulfill the NOACA planning requirements;
3. Enables staff to work with the applicant to develop a project that meets or exceeds NOACA planning requirements;
4. Provides opportunity to project sponsors to revise projects if they do not meet NOACA planning requirements and goals;
5. Creates accountability between project sponsors and the NOACA board;
6. Ensures that public concerns and intergovernmental issues are being addressed by project sponsors as the project evolves.

The PPR process is comprehensive and takes at least three months, depending on the complexity of the project. PPR is composed of:

- Staff Review
- Committee Review
- Intergovernmental Review and Consultation (IGRC)
- Public Involvement
- Board of Directors Review/Consideration

Projects successfully completing PPR will receive a NOACA Board of Directors' Resolution stating that the project has fulfilled staff, Board and public review against NOACA's planning requirements, enabling the project to be amended to the Plan and/or TIP. The resolution may contain comments and/or recommendations that must be addressed by the project sponsor prior to funding commitment in the TIP.

- III. **Fiscal Constraint Analysis** – Financial plans for proposed projects or programs must identify all funding sources that are reasonably expected to be available to finance implementation within the timeframe of the Plan. Furthermore, funding must be available and committed to the project or program in the four-year period for TIP consideration.
- IV. **Air Quality Conformity Analysis (“Conformity”)** – Conformity, required by 40 CFR Part 93 in implementation of the Clean Air Act, Section 176(c), is a way to ensure that proposed transportation projects and programs are consistent with Federal air quality goals. Conformity applies to all projects and plans proposed for implementation in the NOACA region, as a designated air quality nonattainment area.

## A. Long-Range Transportation Plan

Federal regulations require NOACA to update its Plan every four years, amend it thereafter as needed and identify the transportation projects and programs proposed for implementation over the 20-year life of the Plan. NOACA will amend the Plan annually for new projects, or quarterly for projects eligible for concurrent Plan and TIP amendment as described Section IV. Concurrent Plan and TIP Amendments.

The following policies will guide NOACA in the identification and prioritization of those projects and programs.

### I. Plan Update and Amendment (Annually)

#### A. Project Identification

1. NOACA will identify transportation system deficiencies and needs over the 20-year Plan, using available system management tools and processes including, but not limited to:
  - i. **Transportation Asset Management** – Roadway and bridge deficiencies.
  - ii. **Congestion Management Process** – Congested locations and corridors.
  - iii. **Safety Plans/Studies, Safe Routes to School Travel Plans, and Regional Safety Audits** – Intersections and segments with existing or predicted safety issues, with emphasis on serious injury or fatal crash reduction.
  - iv. **Regional Bike Plan and Transportation for Livable Communities Studies** – Bicycle and pedestrian priority system gaps and enhancements.
  - v. **Transit Agency Plans** – Vehicle and infrastructure replacement schedules and service upgrade plans for new or improved service operations.
2. NOACA will coordinate with transportation system owners and providers (local governments, regional transportation agencies, external funding agencies, etc.) to review identified needs to ensure consistency and completeness.
3. Identified needs will be incorporated into the Plan in an optimum year to address the targeted deficiency. Being on the Plan indicates that the project will be targeted for implementation within the timeframe of the Plan. It does not guarantee a project's funding and implementation schedule in relation to other projects in the region for investment of NOACA funds.
4. Once a project is on the Plan, staff will work with sponsors to develop complete projects that address the identified system need.

#### B. Plan Project Evaluation and Prioritization - Project evaluation and prioritization criteria will be used to evaluate all projects proposed for Plan and TIP incorporation.

1. **Non-NOACA-Administered Funds** – Evaluated in accordance with NOACA performance measures and targets. Projects will also will be evaluated against the priority criteria established by the proposed external funding program.
2. **NOACA-Administered Funds** – Evaluated in accordance with NOACA performance measures and targets. In addition, projects planned for years five and six of the Plan will be evaluated and prioritized in accordance with regional benefit prioritization criteria that is aligned with NOACA goals.



## B. Transportation Improvement Program (TIP)

### II. TIP Update (Biennially)

#### A. Project Identification and Evaluation

1. NOACA will update the TIP with new projects every two years. Projects programmed in the last two years of the existing TIP will remain in those years pending reevaluation against TIP screening criteria.
2. Projects can only be amended to the TIP if they have previously been incorporated into the Plan or if they meet the conditions of Section IV. Concurrent Plan and TIP Amendments.
3. Projects will be advanced for TIP Update in accordance with the prioritization established in years five and six of the Plan, contingent upon meeting TIP screening criteria for project readiness:
  - i. All conditions resulting from Project Planning Review, if applicable, have been addressed to the satisfaction of the appropriate NOACA committees, subcommittees and/or councils
  - ii. Final scope has been approved and is consistent with NOACA goals
  - iii. Implementation schedule is realistic and accounts for all necessary project development milestones
  - iv. Project funding plan is committed for the year of implementation and cites reasonably expected revenues to be available for the demonstration of fiscal constraint

### III. TIP Amendment (Quarterly) – Amendments are major revisions to the TIP that require federal (FTA and/or FHWA) approval, public comment, demonstration of fiscal constraint, and, if the project adds capacity, a conformity determination. In context of the long-range transportation planning process, an amendment is a revision approved by NOACA in accordance with its public involvement process.

#### A. Amendments that require a Board of Directors' resolution are those that:

1. Add or delete a project or project phase into or out of the current TIP that are not categorized as statewide line items or administrative modifications
2. Include a significant revision to a project or project phase cost estimate
3. Include a significant change to a project or project phase description or scope, including initiation dates, termini and proposed work
4. Affect fiscal constraint or affect air quality conformity (regardless of funding source)

### IV. Concurrent Plan and TIP Amendments (Quarterly)

- #### A. Most projects should be amended to the Plan and TIP through the process laid out in the Plan Update and TIP Amendment sections of this policy; however, the NOACA Board of Directors can concurrently amend projects to the Plan and TIP if any of the following occur:
1. Projects are eligible in accordance with ODOT Statewide Line Item guidance
  2. Funds are demonstrated to be available for new projects to be advanced in the Plan and TIP outside the periodic update cycles. Funds may become available due to a variety of reasons, including:
    - i. New revenue made available to the region
    - ii. Previous State Fiscal Year carry forward

- iii. Delayed or canceled projects
- iv. Bids awarded under estimate
- v. Adjustments for actual material and/or labor quantities

**V. Administrative Modifications (Quarterly)** - Modifications are minor revisions to the TIP that do not require a Board of Directors' resolution. Administrative Modifications are performed by staff and are documented through an Administrative Modification memorandum. Administrative Modifications include:

1. Revisions to project description without causing significant change to the project scope or conflict with the environmental document
2. Revisions to a project's fiscal year within the current TIP
3. Revisions to funding source or type of funds
4. Combining or splitting projects (if combining, both projects must be on current TIP), without causing significant change to the project scope, environmental document or air quality conformity
5. Change in the project sponsoring agency
6. Other technical modifications, clerical errors, bookkeeping, line-item project descriptions and other reasons that do not impact NOACA policy implementation or funding balances

## **C. NOACA Annual Priority List**

Annual Priority List (APL) Requirements:

To be selected for the APL, a project sponsor must:

- Provide evidence that the final plan package is ready for submittal
- Agree in writing to a not-to-be-exceeded federal funding amount
- Agree in writing to encumber funds within a specific quarter of a state fiscal year

Staff develops the draft APL for Planning and Programming Committee and Board approval. The projects contained within the APL will be monitored by staff for delivery against developed performance measures and targets.

## **V. Financial Management and Other Policies**

### **A. Project Funding Limit**

In developing the lockdown list, the staff and Planning and Programming Committee will work to ensure that no single project will adversely affect other ready projects. The Finance and Audit Committee may recommend the following regarding projects whose cost is greater than 25 percent of the annual federal fund allocation:

- Financing a portion of the cost through the State Infrastructure Bank (SIB), or other financing alternative, to be repaid with future allocations of NOACA federal funds
- Sponsor financing of a portion of the cost of a project. The sponsor would be paid back with future allocations of NOACA federal funds.

### **B. Project Cost Increases**

By agreeing to the Board-approved TIP funding maximum and schedule for their project, project sponsors are acknowledging their firm commitment to helping manage project cost increases.

Because unforeseen events can occur, a project sponsor may petition the Finance and Audit Committee for additional funds. The NOACA Project Cost Increase Management Policy, available on the NOACA website, establishes conditions for eligibility and management of these requests. The Planning and Programming Committee may be requested to investigate technical causes of the cost increases.

All requests for additional funds will be contingent upon the availability of funding in the current NOACA TIP.

**Non-Eligible Requests:**

1. Costs resulting from increased scope not needed to complete the original project
2. Projects that have been delayed by the sponsor more than one fiscal year outside the original TIP program year
3. Covering a shortfall resulting from the project bids coming in higher than the estimate, without justification of unforeseen conditions
4. Costs associated with construction engineering and inspection activities or annual inflation above the percentages established in the ODOT Construction Engineering and Inspection Guidelines and SFY Business Plan Inflation Calculator. Both of these tools can be found on the ODOT Office of Estimating website.
5. Costs incurred during construction that were caused by engineering or design errors and omissions
6. Covering a shortfall in funding from other sources (i.e., local, state, private or other federal)
7. Contingencies or requests to reserve funding for potential change orders
8. Overruns incurred as the result of contractor or project sponsor negligence

**Eligible Requests:**

1. Costs identified due to unforeseen conditions during the engineering or right-of-way acquisition phase
2. Change orders during construction that are necessary to:
  - a. Complete the project as approved by the NOACA Board without additional scope or project changes
  - b. Meet federal or state requirements and standards that are new or were unforeseen at the time preliminary development was initiated
  - c. Cover conditions not reasonably discoverable in the engineering phase

**Additional Requirements:**

1. Requests are limited to no more than 15% of the original Board commitment. Costs in excess of 15% will be the responsibility of the project sponsor. Projects that cannot be implemented without significant cost increase would be withdrawn from the TIP and compete with other priority projects in a later year to obtain a higher NOACA commitment.
2. The project must have received Stage 3 design plan approval consistent with the ODOT Project Development Process prior to cost increase consideration.

3. All other funding committed to the project is being used to capacity.

In consideration of a request for additional funds, the Finance and Audit Committee may:

1. Deny the request
2. Request additional local funds be used for the project
3. Reduce future NOACA commitments to the project sponsor by the amount of the request
4. Reschedule the project
5. Accept the full request
6. Partially accept the request

If multiple project increase requests are being evaluated concurrently, priority for limited funding will be determined by the Finance and Audit Committee.

Approved cost increases later determined not to be needed, such as in the case where bids come in under estimate, will first be credited back to the NOACA funding program prior to the local sponsor or other funding program realizing a savings.

### **C. Management of Delayed or Abandoned Projects**

Through coordination efforts, projects may be dropped from the TIP due to direct input from sponsors. NOACA requires cancellations to be in writing from the project sponsor. The Board of Directors will be informed of any project cancellations. These project cancellations may result from resolutions that rescind legislation (cooperative agreements), sponsors deciding not to prepare programming materials or hire consultants or decisions to perform work without federal funds.

Annually, NOACA reviews the status of projects on the TIP. Sponsors must demonstrate that the project is being advanced for construction and that funds will be encumbered near the project's scheduled time.

If a project is not advancing and it appears unlikely that it will be able to encumber funds within a reasonable time, the Board of Directors may remove the project from the TIP until the project begins to move forward again. (The project will remain on the Transportation Plan.)

### **D. Right-of-Way, Preliminary Engineering and Utility Rearrangements**

Generally, NOACA-administered federal funds may not be used for project-level preliminary engineering. An Urban Core Community may request federal-aid funds for preliminary engineering. At the time of request, the project will be reviewed by the Planning and Programming Committee, which will then provide a recommendation to the Board of Directors.

Project sponsors may request funds for right-of-way (ROW) for a NOACA-funded project. When the cost of right-of-way is greater than \$50,000, NOACA will pay 50 percent of the cost above \$50,000. NOACA will not pay for right-of-way costing \$50,000 or less. If NOACA



funds are used for the ROW phase, NOACA cannot assure that the construction phase will automatically be given program priority the following fiscal year.

A proposed improvement may affect publicly owned utilities in such a way that utility rearrangements are necessary. NOACA considers the costs for these utilities rearrangements to be part of the construction phase where eligible for federal reimbursement is expected, unless the consent legislation or other agreements specify otherwise.

## **E. Local Public Agency (LPA)-Administered Projects**

ODOT implements a Local Public Agency (LPA) policy that permits local project sponsors to perform project responsibilities in an attempt to streamline certain elements of the project delivery system. NOACA staff will coordinate with ODOT to ensure that any LPA agreements that are entered into with project sponsors using NOACA federal funds accurately reflect Board of Directors' policies.

## **F. TIP Monitoring Reports**

NOACA staff will develop a monthly TIP project status report for use by NOACA committees and the Board. The report will contain information regarding the status of projects for the current fiscal year and other relevant information.

## **G. Signal Preemption Planning Policy**

NOACA strongly encourages regional and countywide signal preemption policies that help police, fire and other emergency vehicle response times. Based on existing preemption equipment and agreements, NOACA requires that 1) future preemption systems in Cuyahoga and Medina counties be sound activated and 2) future preemption systems in Lake County be light activated. Other traffic signal preemption systems will be allowed, provided communities in Cuyahoga and Medina Counties maintain sound activated preemption as a parallel system, and communities in Lake County maintain light activated preemption as a parallel system.

Requests for new traffic signaling systems must be coordinated with the agency responsible for public transit in the project study area to help ensure that the system is capable of signal priority for public transit vehicles in a transit corridor.

## **H. New or Modified Highway Interchange Projects**

All new or modified interchange projects requiring an IMS or IJS are major projects, and must complete a Feasibility Study or Alternatives Evaluation Report that recommends a preferred alternative. The planning phase of new or modified interchange projects may be considered for amendment to the LRTP and TIP through NOACA PPR and IGRC procedures. After IMS or IJS approval by FHWA and ODOT, funding for the Construction phase of projects may be proposed for amendment to the TIP.

## RECOMMENDATIONS

### 5. Warrensville Center Road and Traymore Road and Hillbrook Road Intersections

The lack of mid-block pedestrian crossings is evident along Warrensville Center Road. The distance between the two closest crosswalks between Silsby Road and Meadowbrook Blvd. is 0.42 miles (2,240 feet) (see Figure 13). There are no east-west crosswalks at the stop-controlled intersections of Warrensville Center Road with Hillbrook Road and Traymore Road. In addition to the midblock crossing recommended between Traymore Road and Hillbrook Road, this study recommends:

- Adding two new crosswalks at the Hillbrook Road intersection and two at the Traymore Road intersection
- Installing curb extensions (bump outs) to shorten the crossing distance, enhance pedestrian visibility and add new green space (see Figure 14)

Figure 15 shows a view of the existing south corners of the Hillbrook Road intersection and the proposed curb extensions and pedestrian crossings.

Figure 13: Warrensville Center Road



Figure 14: Bump outs and crosswalks at Hillbrook Road intersection



# RECOMMENDATIONS

Figure 15: Existing and proposed Hillbrook Road intersection

