



LEGISLATIVE COVER MEMO

Introduction: September 19, 2022

Agenda Item: **Resolution 2022-66**

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ODOT TO DEVELOP, PLAN, CONSTRUCT, INSTALL AND MAINTAIN THE GATEWAY MONUMENT/LANDSCAPE IMPROVEMENTS AT THE INTERCHANGE OF I-75 AND SR 73.

Submitted by: Barry Conway, City Engineer

Scope/Description: The purpose of the proposed legislation is to authorize the City Manager to execute all appropriate ODOT documents necessary for the completion of the City's gateway monument and landscape improvements along I-75 and SR 73 located within ODOT's limited right-of-way.

Budget Impact: N/A

Exhibits: Exhibit A: Agreement

Recommendation: Staff recommends approval of this resolution.

CITY OF FRANKLIN, OHIO
RESOLUTION 2022-66

**AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ODOT TO DEVELOP, PLAN,
CONSTRUCT, INSTALL AND MAINTAIN THE GATEWAY MONUMENT/LANDSCAPE IMPROVEMENTS AT THE
INTERCHANGE OF I-75 AND SR 73.**

WHEREAS, the City plans to make landscape and hardscape enhancements at the intersection of I-75 and SR 73 including tree plantings, shrubs, and signage within ODOT's limited access right-of-way;

WHEREAS, ODOT requires the City to enter into an agreement in order to make improvements within their right-of-way; and

WHEREAS, the improvement project herein above described are considered to be desired for the community to enhance the entrance to the City,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Franklin, Ohio, a majority of members present concurring, that:

Section 1. The City Manager is hereby authorized to execute an agreement with ODOT to develop, plan, construct, install and maintain the gateway monuments/landscape improvements along I-75 and SR 73.

Section 2. It is found that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code, and the Rules of Council.

Section 3. This Resolution shall be effective immediately upon its passage.

ADOPTED: September 19, 2022

ATTEST: _____
Khristi Dunn, Clerk of Council

APPROVED: _____
Brent Centers, Mayor

CERTIFICATE

I, the undersigned Clerk of Council for the Franklin City Council, do hereby certify that the foregoing is a true and correct copy of a resolution passed by that body on September 19, 2022.

Khristi Dunn, Clerk of Council

ODOT Agreement Number: 38195 ____

Associated Permit(s) Number(s): ____

AGREEMENT
BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION
AND THE CITY OF FRANKLIN, OHIO

(Local Government)

TO DEVELOP, PLAN, CONSTRUCT AND INSTALL, AND MAINTAIN A LOCAL GOVERNMENT COMMUNITY
GATEWAY MONUMENT/LANDSCAPING PROJECT
AT THE INTERCHANGE OF
INTERSTATE 75 AND STATE ROUTE 73

This Agreement is entered into as of the date of the last signature by a party below, by and between the State of Ohio, acting by and through the Director of the Ohio Department of Transportation (hereinafter referred to as "ODOT"), 1980 West Broad Street, Columbus, Ohio 43223 and THE CITY OF FRANKLIN, OHIO, being a MUNICIPALITY (hereinafter referred to as the "APPLICANT"), 1 BENJAMIN FRANKLIN WAY, FRANKLIN, OHIO 45005

RECITALS

WHEREAS, under Ohio Revised Code Section 5501.31, the Director of Transportation has the general supervision of the roads comprising the state highway system; under Section 5501.11, Section 5501.31 and Section 5535.08, the Director is responsible for the maintenance and repair of such state highways; and under Section 5501.49, the Director is responsible for the construction, reconstruction and major maintenance and repair of all bridges on state highways within municipal corporations; and

WHEREAS, under state law and 23 USC Section 116, ODOT is responsible for the construction, reconstruction, maintenance and repair of Interstate highways and responsible to secure the maintenance on highways on the National Highway System by an appropriate political subdivision where ODOT is not directly responsible for maintenance and repair; and

WHEREAS, under Section 5501.42, ODOT has supervision and control of all trees and shrubs within the limits of a state highway; and

WHEREAS, under Section 5515.01, ODOT may authorize the use or occupation of such portion of a road or highway on the state highway system as will not incommode the traveling public by means of a process of issuing right of way permits and to impose on such permits specific conditions enumerated in said Section 5515.01 and such other conditions as may seem reasonable to its Director, including entering into Agreements for the planning, construction, installation and maintenance of proposals for a local government Community Gateway Monument and/or Landscaping Project in conformity with certain standards and conditions as may be adopted and amended from time to time as stated in ODOT's Guidance for Community Gateway Monuments (hereinafter referred to as "Guidance"), provisions of

ODOT's Location and Design Manual (hereinafter referred to as "L & D"), and such other duly authorized publications of ODOT; and

WHEREAS, under 23 CFR Section 710 Subpart D, promulgated by the Federal Highway Administration of the U.S. Department of Transportation (hereinafter referred to as "FHWA"), ODOT may allow non-highway uses of right of way of Federal-aid highways that received FHWA funding in any way; and rights of way of interstate highways, provided that the use complies with regulations contained therein; including receipt of FHWA approval, when required; and

WHEREAS, as to certain portions of state highway right of way that are located within municipal corporations of the State and held as limited access right of way interests, with all abutter's rights of access having been acquired/extinguished by purchase or appropriation, notwithstanding any other provision of law assigning responsibility for maintenance or repair of said highway or portions thereof to the municipal corporation, ODOT retains jurisdiction over permitting uses and entering into Agreements pertaining thereto; and

WHEREAS, ODOT holds certain state highway right of way interest in and jurisdiction over the tract or parcel of land that is part of the state highway system and is further described in Paragraph 1.1 below (hereinafter "the Premises"); and

WHEREAS, the APPLICANT, being the City of Franklin, Warren County, Ohio, a political subdivision of the State of Ohio; desires to use a portion of such Premises for the construction and/or installation and maintenance of a Community Gateway Monument/Landscaping Project or both as further described in Paragraph 1.2 below (hereinafter referred to as "THE PROJECT"); and

WHEREAS, the APPLICANT is willing to provide all materials, construction, and costs associated with design, planning, approvals of and constructing the PROJECT; is willing to cooperate fully with ODOT in constructing and completing the PROJECT; and after completion, is willing to maintain the PROJECT for the life expectancy of the PROJECT, unless otherwise agreed to between the parties; and

WHEREAS, the Director of ODOT, has determined that APPLICANT'S proposed PROJECT is in the public interest; is consistent with the continued use, operation, maintenance, and safety of the highway facility; and that such use does not impair the highway or interfere with the free and safe flow of traffic so that the Director will permit the APPLICANT to use the Premises for the stated PROJECT use, provided such use does not impair the use and safety of the existing state highway; provided that the APPLICANT maintains the PREMISES for use as part of the state highway system; and provided that the planning, design, installation, construction and maintenance conditions stated in the above-mentioned Guidance, L & D and other ODOT publications and any additional conditions stated herein; and

WHEREAS, the APPLICANT is duly authorized to and does hereby agree to comply with ODOT's design, installation and maintenance standards and conditions.

NOW, THEREFORE, in consideration of the performance of the covenants and conditions stated herein and as may be supplemented by the terms and conditions of the contemporaneously issued above-mentioned Right of Way Permit, the parties mutually agree as follows:

1. **ODOT AGREEMENT TO USE; PREMISES AND STATED USE**

- 1.1 To the extent of ODOT's interest in the herein described Premises, ODOT does authorize APPLICANT the right and privilege to use the Premises for the stated PROJECT described herein. The Premises are shown on Exhibit A attached hereto and incorporated herein, and more specifically described as follows:

(County, Route, Section number

ROW Parcel number(s)—in whole or in part, where applicable

Identify by station numbering where no ODOT Parcel number applicable)

- 1.2 THE PROJECT that has been identified and detailed under ODOT District 8 Right of Way Permit No. _____ (MR 509) for the following:

(Check each item applicable)

☒ The design, construction and maintenance of a Local Government Community Gateway Monument

☒ The design, construction and maintenance of a Landscaping Project

- 1.3 Any proposed substantial change in the Stated Use of the Premises may not be undertaken or made by the APPLICANT without prior review of plans for such change in use and written approval of ODOT and FHWA, as necessary.
- 1.4 The Parties understand and agree that ODOT shall have no duty or obligation whatsoever arising from the issuance of the MR 509 Permit or the entering of this Agreement except for such rights, powers and responsibilities provided by applicable state and federal laws and regulations; and except as may be expressly provided in this Agreement.

2. **OBLIGATIONS OF THE APPLICANT REGARDING APPROVALS, DESIGN, INSTALLATION AND CONSTRUCTION OF THE PROJECT:**

- 2.1 The APPLICANT agrees to furnish, at no cost to ODOT, a complete set of the Plans and Specifications of the PROJECT and to submit the same in a timely manner for review and approval by ODOT and, if necessary, by the FHWA.
- 2.2 The APPLICANT agrees to cooperate with ODOT and, where necessary, the FHWA in obtaining the approval of the PROJECT Plans and Specifications by all necessary parties.

- 2.3 The APPLICANT shall submit Plans and Specifications that include provisions for the restoration of all portions of the Premises in and adjacent to the area of construction of the PROJECT to be as close to their original conditions, as applicable.
- 2.4 Upon approval of the PROJECT plans by ODOT and by FHWA, as applicable, all of such plans shall be reference herein become part of this Agreement.
- 2.5 ODOT's and FHWA's approval, where required, of plans and specifications for THE PROJECT, is for ODOT's and the FHWA's benefit only, and such approval is not intended or to be construed as benefitting the APPLICANT, APPLICANT'S contractor or consultants, or any third party, except as to the allowance of the approved plans to be installed, built or constructed in the Premises.
- 2.6 The APPLICANT shall provide a copy of any required legislative resolution or ordinance authorizing the PROJECT as provided in the above-mentioned Guidance document.
- 27 The APPLICANT agrees to pay the entire cost of the PROJECT including, but not limited to, plans and designs, material, labor and landscape plantings, as detailed in the approved Plans and Specifications.
- 2.8. The APPLICANT agrees to perform or to have performed all construction, inspection, supervision, sampling and testing for the PROJECT, all at the sole cost to and payment by the APPLICANT.
- 2.9. In no event shall any person, firm or entity performing any work allowed under the above-mentioned permit or this Agreement place any lien or claim against the Premises in connection with the APPLICANT'S PROJECT.
- 2.10 The APPLICANT shall provide to ODOT an executed copy of any Contract or Agreement between the APPLICANT and its contractor for the construction and for maintenance of THE PROJECT, if applicable.
- 2.11 The APPLICANT shall prepare Plans and Specifications for any change orders required for satisfactory completion of the work and shall pay any and all costs for such change orders.
- 2.12 APPLICANT agrees that all work on the PROJECT shall be accomplished in accordance with the latest Permitting for Vegetation Maintenance Standard Procedure, Design Criteria, Standard Drawings and Construction and Materials Specifications of ODOT, which shall include provisions for a Maintenance of Traffic Plan using L & D Manual, Volume 1 sections 904.2, 904.2.1 and 904.4 along with L&D Volume 1 Figure 603-2 and/or 905-3, or any such sections or Figures as may from time to time be revised or renumbered by ODOT.

- 2.13 The APPLICANT shall require its construction contractor, if applicable, to provide a contract performance bond and a payment bond in a sum not less than the amount of the construction contract as awarded, and if not so designated to name the State of Ohio and ODOT as additional beneficiaries on that bond, in a form acceptable to ODOT.
- 2.14 The APPLICANT agrees that all work requiring workers or vehicles on the pavement or shoulders of the highway facility shall comply with all the requirements of the Ohio Manual of Uniform Traffic Control Devices (hereinafter referred to as "OMUTCD") and the Maintaining Traffic section of the current ODOT Construction and Materials Specifications. Failure to comply with these requirements will be cause for ODOT to order the immediate suspension of construction contract work until the proper traffic controls have been provided.
- 2.15 Upon completion of THE PROJECT and in connection with ODOT's performance of a final inspection under its right of way permit inspection form (MR 687), the APPLICANT shall certify that THE PROJECT is completed in accordance with the provisions of the Agreement and in accordance with the current ODOT Construction and Materials Specifications and other appropriate and applicable specifications, and such certification shall be placed with the completed ODOT inspection form.
- 2.16 Upon completion of the installation or construction of THE PROJECT, the APPLICANT shall ensure that the highway clean of all rubbish, excess materials, temporary structures and equipment and shall restore any highway property disturbed during THE PROJECT using materials, design and workmanship in conformance with the ODOT Construction and Material Specifications, L & D, or other existing Department Standards.

3. OBLIGATIONS OF APPLICANT REGARDING MAINTENANCE OF THE PROJECT

- 3.1 All maintenance obligations of the APPLICANT shall commence upon completion of the PROJECT and shall and continue for the lifespan of THE PROJECT.
- 3.2 During the performance of any inspections, maintenance or repair activities, the APPLICANT shall keep any exit and entrance ramps to an interchange or corridor at the Premises open to traffic at all times.
- 3.3 The APPLICANT agrees to perform all necessary maintenance activities consistent with industry standards or practices.
- 3.4 Generally, the APPLICANT shall maintain THE PROJECT in an attractive manner, keeping it clean, free of graffiti, and in good repair.

- 3.5 The APPLICANT shall be required to provide for regularly scheduled maintenance, as described in this Agreement, for the lifespan of THE PROJECT, including graffiti removal and restoration work to maintain the integrity of THE PROJECT.
- 3.6 Maintenance practices shall protect air and water quality as required by law.
- 3.7 "Maintenance activities" can include, but shall not be limited to: litter removal, repairing the concrete edging, repairing the retaining wall, herbicidal spraying, on-going landscape maintenance, repair or replacement of any dead trees or plants and repair, mowing or replacement of ground cover.
- 3.8 The APPLICANT understands and agrees that ODOT may perform maintenance activities in the area of THE PROJECT such as litter pickup and other maintenance that is normally associated with the transportation facility or right-of-way and that ODOT will not provide maintenance of the Community Gateway Monument itself.
- 3.9. The APPLICANT agrees to ensure that sufficient funds and resources are appropriated, encumbered and made available for ongoing maintenance of and repairs to THE PROJECT after its completion.
- 3.10 If not already provided for or covered in the above-mentioned Right of Way Permit, the APPLICANT shall apply for any necessary permits to use and occupy the rights-of-way for the purposes of performing maintenance of THE PROJECT and/or landscaping, in an attractive manner, which permits will not be unreasonably withheld.
- 3.11 The APPLICANT agrees to submit any additional landscaping plans to ODOT for prior approval or to submit changes, additions, or deletions to existing landscaping to ODOT for prior approval in a timely manner.
- 3.12 The APPLICANT will provide the necessary safeguards to protect the public and the Premises, and to protect the safety and appearance of the state highway facility. APPLICANT agrees to maintain the appearance of the Premises in accordance with all approved plans and specifications, or as otherwise required by ODOT, and to repair any damages to the Premises caused by the APPLICANT'S use of the Premises. The APPLICANT agrees that any repair or required maintenance will be made within a reasonable time after written notice has been given to APPLICANT by ODOT.
- 3.13 The APPLICANT shall not use the Premises to store any hazardous material including, without limitation, any substance or material which has been determined by the U.S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated in 49 CFR 171.8 and as may be amended. Further, the APPLICANT agrees that the Premises will not be used for any purposes

that would constitute a potential fire hazard or any other hazard that would impair the use or safety of the Premises or the state highway.

- 3.14 The APPLICANT agrees that all landscaping Project proposals will include a proposed short and long-term maintenance schedule.

3.14.1 The short-term maintenance schedule must be of sufficient length to allow newly installed plant material to survive and reach a state of maturity, which then requires minimal future maintenance. Maintenance activities during a plant establishment period typically include provision for replacement of dead or damaged plants, watering schedule, pruning, periodic replacement of mulch or other ground cover, weed control, rodent and pest and other activities required to obtain the long-term survival of planted material.

3.14.2 The long-term maintenance schedule must address the period after plant establishment, including pruning activities, spring and end-of-season clean up, ongoing weed removal and litter removal, ongoing replacement or refreshment of mulch or other ground and any necessary rodent and pest control.

3.14.3 A Landscaping Project shall provide plans for erosion control during the installation of the Project as well as an explanation of how mulch or other ground covers will remain in place during heavy rain events.

- 3.15 The APPLICANT shall remove the Community Gateway Monument and/or Landscape Project if, in the opinion of ODOT, due to deterioration or inadequate maintenance it creates a safety or operational concern relating to operation of the highway facility. ODOT will notify the APPLICANT when it has determined that such conditions exist and the Community Gateway Monument and/or Landscape Project needs maintenance, repair, rehabilitation or removal. In the event the APPLICANT fails to maintain, repair, rehabilitate, or remove the Community Gateway Monument and/or Landscape Project in a timely manner, ODOT may proceed with issuance and service of a notice to remove under Section 5515.02 of the Ohio Revised Code. In the event of the failure of the APPLICANT to remove the Community Gateway Monument and/or Landscape Project within 60 days following service of notice, ODOT may remove the Community Gateway Monument and/or Landscape Project, restore the area to as near its prior condition as practicable and invoice the APPLICANT for all costs and expenses of removal and restoration of the area.

- 3.16 Neither the issuance of the Right of Way Permit nor the signing of this Agreement will abridge or abrogate ODOT's authority under Revised Code Section 5515.02 to remove or alter any Community Gateway Monument and/or Landscape Project that presents an immediate and serious threat to the safety of the traveling public without prior notice to the APPLICANT or delay.

4. OBLIGATIONS OF ODOT

- 4.1 Upon approval of the Plans and Specifications, ODOT agrees to issue a Right of Way Permit (MR 509) to the APPLICANT to use and occupy the rights-of-way for purposes of this PROJECT.

5. NOTICE

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

Applicant's Name: <u>City of Franklin, Ohio</u>	Ohio Department of Transportation
Address: <u>1 Benjamin Franklin Way</u>	Address: _____
<u>Franklin, Ohio 45005</u>	_____
Attn: <u>Jonathan Westendorf, City Manager</u>	Attn: _____
Telephone: <u>937-746-9921</u>	Telephone: _____

6. BREACH OF AGREEMENT

- 6.1 Neglect or failure of the APPLICANT to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, shall be an event of default, unless such failure or misrepresentation are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the APPLICANT's control. The APPLICANT, however, shall remedy as soon as possible each cause preventing its compliance with this Agreement.
- 6.2 If APPLICANT is 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 APPLICANT shall have thirty days, or some other time period mutually agreed with ODOT, from the date of such notification to remedy any causes preventing its compliance and curing the default situation. In the event that APPLICANT fails to remedy the default upon the expiration of the thirty days or negotiated time period ODOT may terminate this Agreement under Section 8.
- 6.3 If the APPLICANT does anything contrary to the approved Plans and Specification and after due notice to remove and replace or correct unauthorized or defective work, fails to correct such action, ODOT may terminate this Agreement as provided in Section 8.
- 6.4 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 as now or hereafter may exist at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default or breach by the APPLICANT 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.

7. GENERAL PROVISIONS

- 7.1 The signing of the Agreement and the issuance of associated Right of Way Permits does not in any way abridge the rights or authorities of the Director of ODOT in exercising jurisdiction over the state highway system.
- 7.2 It is understood and agreed between the parties that this Agreement and the accompanying Right of Way Permits create only a right to use the Premises for the specific Stated Use that is subject to the terms and conditions of this Agreement. Neither the issuance of the Right of Way Permit nor the signing of this Agreement creates, grants, conveys, transfers, or vests any property right or interest in the Premises in the APPLICANT.
- 7.3 The APPLICANT understands and agrees that upon termination or expiration of this Agreement, the APPLICANT will not qualify for any relocation benefits under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (the "Uniform Act"), 42 U.S. C. §46501, et seq. or under any other provision of state or federal laws or administrative regulations.
- 7.4 The APPLICANT understands and agrees that the primary purpose of the Right of Way is for construction and maintenance of the state highway system, and that ODOT and the FHWA reserve and retain the right to enter onto the Premises at any time to construct, inspect and maintain the Premises, or for any other highway purposes. ODOT agrees, except in cases of emergency or immediate threat to the safety of the traveling public, to exercise this authority in a manner calculated so as to not unreasonably interfere with APPLICANT'S use of the Premises. If ODOT anticipates activities under this paragraph may require the disruption of use of the Premises by the APPLICANT'S permitted PROJECT, ODOT shall notify the APPLICANT of the need for such activities and the expected period of disruption.
- 7.5 ODOT reserves the right to request of APPLICANT or to cause the removal of the Community Gateway Monument and/or Landscape Project to perform construction, rehabilitation, or other necessary activities affecting the transportation facilities without any obligation, compensation to, or approval of the APPLICANT. Except in the event of an emergency or circumstance of public exigency, ODOT will strive to provide the APPLICANT 90 days' written notice of its request for removal to allow APPLICANT reasonable time for removal and salvage by the APPLICANT, if possible.
- 7.6 This Agreement and associated Right of Way Permit No. _____, together with the approved plans and specifications for THE PROJECT constitutes the entire Agreement between the parties. Any and all prior discussions and understandings between the parties are superseded by this Agreement.

- 7.7 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 and of the FHWA, when necessary. Any change to the provisions of this Agreement must be made in a written amendment executed by both parties.
- 7.8 This Agreement shall be construed and interpreted, and the rights of the parties determined in accordance with the laws of the State of Ohio.
- 7.9 The District Deputy Director of District 8 shall have full authority to ensure the full compliance of the provisions of this Agreement.
- 7.10 The signing of the Agreement or the doing of any work thereunder shall constitute an agreement by the APPLICANT to comply with all the conditions and restrictions of this Agreement, the above-mentioned Right of Way Permit and the approved Plans and Specification for THE PROJECT.
- 7.11 This Agreement and all contracts entered into and permits issued under the provisions of this Agreement shall be binding on ODOT and the APPLICANT and their successor and assigns, provided that any assignment of rights by APPLICANT has prior approval of ODOT.
- 7.12 Each Party shall be responsible for any liability associated or arising from that Party's errors, actions or failures to act. The APPLICANT'S liability shall be determinable under provisions of Chapter 2744 of the Ohio Revised Code (Political Subdivision Tort Liability Act). The liability of ODOT shall only be determined under provisions of Chapter 2743 of the Ohio Revised Code (Ohio Court of Claims Act) and only before a court of competent jurisdiction in accordance with Section 5501.22 of the Revised Code.
- 7.13 Unless the APPLICANT is a self-insuring governmental entity, the APPLICANT, during the term of this Agreement, and its contractor during the time of construction or installation and acceptance of THE PROJECT, shall maintain adequate general liability insurance coverage so as to the extent permitted by Ohio law, it will hold the State of Ohio and ODOT and the FHWA harmless from all suits, actions or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect or on account of any wrongful act or omission on the part of the APPLICANT as a result of the construction or maintenance of the PROJECT within ODOT state highway right of way.
- 7.14 No third-party beneficiaries are intended to be created by the signing of this Agreement and nothing in this Agreement authorized any third parties to bring or to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

- 7.15 Nothing in this Agreement is intended by the Parties to create a partnership or joint venture between the parties for the performance of or enjoyment of the terms and conditions of the Agreement.
- 7.16 The APPLICANT shall comply with the Air Pollution requirements of Rule 3745-17-08 of the Ohio Administrative Code promulgated and enforced by the Ohio Environmental Protection Agency.
- 7.17 In the event that any dispute arises between the APPLICANT and ODOT concerning interpretation of or performance pursuant to this agreement, such dispute shall be resolved in a mutually acceptable manner by the Director of ODOT and the APPLICANT or be subject to subject matter jurisdiction of courts in which claims involving ODOT may be brought under Section 5501.22 of the Revised Code.

8. TERMINATION

- 8.1 Either party may terminate this Agreement by giving the other party ninety (90) days written notice.
- 8.2 Termination shall include revocation of all permits issued for THE PROJECT.
- 8.3 If APPLICANT breaches or violates any term of this Agreement; does not construct or complete construction in accordance with approved plans and specifications; if the associated Right of Way Permit is cancelled or voided for any reasons provided therein; or if the APPLICANT ceases to use or abandons the Premises and the PROJECT thereto, ODOT may terminate this Agreement under Section 6 or, if applicable, after giving APPLICANT written notice of the violation for a period of not less than thirty (30) days to remedy such violation or breach. If such violation or breach is not remedied and the Agreement is terminated, APPLICANT shall restore the Premises to its original condition prior to the PROJECT installation or construction at no cost to ODOT or the FHWA.
- 8.4 Upon a termination of this Agreement for a breach or default by the APPLICANT, or by notice provided in Paragraph 8.1, ODOT shall conduct an inspection of the PROJECT and coordinate with the APPLICANT to arrange for the APPLICANT'S removal of any physical improvements placed by THE PROJECT and for restoration of the Premises to its original condition within a reasonable number of days of termination agreed to by the parties.
- 9.5 ODOT shall conduct an inspection to determine whether the PROJECT has been removed and the site restored to a degree acceptable to ODOT. If the PROJECT is not removed and the site restored to the degree and condition acceptable to ODOT, ODOT may provide the APPLICANT thirty (30) days to remedy the non-compliant items. In the event that the APPLICANT fails to remove and restore the Premises, ODOT will arrange for the restoration and invoice the APPLICANT for the full costs related thereto. The APPLICANT agrees to reimburse ODOT for any and all costs incurred in the costs of restoration. The APPLICANT shall remain obligated to ODOT under this Paragraph

which hereby expressly survives the expiration or termination of this Agreement. ODOT may certify any remaining balance due by the APPLICANT to the Ohio Attorney General for collection.

10. **SIGNATURES**

- 10.1 Any person executing this agreement in a representative capacity hereby warrants that he/she has been duly authorized to execute this agreement.
- 10.2 This Agreement may be executed in any number of counter parts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- 10.3 Any Party may deliver a copy of its counterpart signature page to this Agreement via fax or email. Each Party shall be entitled to rely upon a facsimile or electronic signature of any other Party delivered in such a manner as if such signature were an original.

THE STATE OF OHIO
Department of Transportation

City of Franklin, Ohio

Jack Marchbanks, Ph.D.
Director

Jonathan Westendorf
City Manager

Date: _____

Date: _____