



LEGISLATIVE COVER MEMO

Introduction: July 1, 2024

Agenda Item: **Resolution 2024-43**

AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL COST SHARING AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO AND THE MONTGOMERY COUNTY ENGINEERS OFFICE, OHIO RELATING TO COMPENSATORY MITIGATION FOR AQUATIC RESOURCE IMPACTS CREATED BY REMOVAL AND RECONSTRUCTION OF THE DAYTON-CINCINNATI PIKE (NORTH DIXIE HIGHWAY) RETAINING WALL.

Submitted by: Barry Conway, City Engineer

Scope/Description: This IGA allows the City of Franklin to jointly work with the Montgomery County Engineer's Office to mitigate environmental impacts to stream and wetland resources classified as Waters of the United States under permitting jurisdiction of the US Army Corps of Engineers.

Budget Impact: The US Army Corps of Engineers office estimates the mitigation will cost approximately \$541,660. The City's share of the cost is approximately \$351,972. The City's share of the project will come from the Capital Improvement Fund.

Exhibits: Exhibit A: Agreement

Recommendation: Staff would recommend approval of this Resolution.

CITY OF FRANKLIN, OHIO
RESOLUTION 2024-43

AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL COST SHARING AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO AND THE MONTGOMERY COUNTY ENGINEERS OFFICE, OHIO RELATING TO COMPENSATORY MITIGATION FOR AQUATIC RESOURCE IMPACTS CREATED BY THE REMOVAL AND RECONSTRUCTION OF THE DAYTON-CINCINNATI PIKE (NORTH DIXIE HIGHWAY) RETAINING WALL.

WHEREAS, the existing Dayton-Cincinnati Pike retaining wall was constructed approximately 125 years ago and is in poor condition and structurally unstable; and

WHEREAS, the existing retaining wall is situated in Miami Township, Montgomery County, and the City of Franklin, Warren County, and the Montgomery County Engineer and the City of Franklin are responsible for maintenance of their respective portions of the wall; and

WHEREAS, the Dayton-Cincinnati Pike Retaining Wall Removal and Roadway Realignment (hereinafter the "Project") will involve reconstruction of Dayton-Cincinnati Pike (North Dixie Hwy) on a shifted alignment to allow for removal of the existing retaining wall; and

WHEREAS, shifting the alignment of Dayton-Cincinnati Pike (North Dixie Hwy) will impact stream and wetland resources classified as Waters of the United States under the permitting jurisdiction of the US Army Corps of Engineers; and

WHEREAS, the aquatic resource impacts are expected to exceed the threshold for waiving compensatory mitigation, resulting in the need to provide compensatory mitigation in order to obtain a US Army Corps of Engineers permit for the Project; and

WHEREAS, the Board and the City recognize that a joint effort to execute the Project will benefit the public welfare at cost savings to both jurisdictions relative to undertaking the improvements separately; and

NOW, THEREFORE, be it resolved by the Council of the City of Franklin, Ohio, a majority of Council members present concurring, that:

Section 1. The City Manager is hereby authorized to execute the Intergovernmental Agreement between the City of Franklin, Board of County Commissioners of Montgomery County, Ohio and the Montgomery County Engineers Office, Ohio..

Section 2. The City's funding commitment is estimated at Three Hundred Fifty-One Thousand Nine Hundred and Seventy-Two Dollars and No Cents (\$351,972) for the compensatory mitigation cost of the reconstruction of the retaining wall. The mitigation costs shall be paid from the funds appropriated by this Council in the City's operating budget in 2024.

Section 3. The City Manager is hereby also authorized to execute any other documents as may be necessary to effectuate the terms of said Intergovernmental Agreement.

Section 4. It is hereby 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 5. This Resolution shall become effective immediately upon its passage.

ADOPTED: July 1, 2024

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 July 1, 2024.

Khristi Dunn, Clerk of Council

COST-SHARING AGREEMENT

between

THE BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO,

acting through

THE MONTGOMERY COUNTY ENGINEER,

and

THE CITY OF FRANKLIN, WARREN COUNTY, OHIO

relating to the

Dayton-Cincinnati Pike Roadway Realignment
Compensatory Mitigation for Aquatic Resource Impacts

*for retaining wall removal and reconstruction of Dayton-Cincinnati Pike (North Dixie Hwy)
in Miami Township, Montgomery County, and the City of Franklin, Warren County*

dated

June 2024

Dayton-Cincinnati Pike (N Dixie Hwy)
Retaining Wall Removal & Roadway Realignment
Compensatory Mitigation for Aquatic Resource Impacts

THIS AGREEMENT is entered into this _____ day of _____, 2024, between the City of Franklin, 1 Benjamin Franklin Way, Franklin, Ohio 45005 (hereinafter the “City”), and the Board of County Commissioners of Montgomery County, Ohio, 451 West Third Street, Dayton, Ohio 45422 (hereinafter the “Board”).

WHEREAS, the existing Dayton-Cincinnati Pike retaining wall was constructed approximately 125 years ago and is in poor condition and structurally unstable; and

WHEREAS, the existing retaining wall is situated in Miami Township, Montgomery County, and the City of Franklin, Warren County, and the Montgomery County Engineer and the City of Franklin are responsible for maintenance of their respective portions of the wall; and

WHEREAS, the Dayton-Cincinnati Pike Retaining Wall Removal and Roadway Realignment (hereinafter the “Project”) will involve reconstruction of Dayton-Cincinnati Pike (North Dixie Hwy) on a shifted alignment to allow for removal of the existing retaining wall; and

WHEREAS, shifting the alignment of Dayton-Cincinnati Pike (North Dixie Hwy) will impact stream and wetland resources classified as Waters of the United States under the permitting jurisdiction of the US Army Corps of Engineers; and

WHEREAS, the aquatic resource impacts are expected to exceed the threshold for waiving compensatory mitigation, resulting in the need to provide compensatory mitigation in order to obtain a US Army Corps of Engineers permit for the Project; and

WHEREAS, the Board and the City recognize that a joint effort to execute the Project will benefit the public welfare at cost savings to both jurisdictions relative to undertaking the improvements separately; and

WHEREAS, the Board and the City have previously executed Cost Sharing Agreements for other Project phases as listed below.

<u>Cost Sharing Agreement</u>	<u>BCC Resolution</u>	<u>Date</u>
Feasibility Study	20-1619	December 22, 2020
Final Design	22-0712	May 3, 2022
R/W and Construction	24-0644	April 9, 2024

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with the intent to be legally bound, agree as follows:

I. General. The Board, acting through the Montgomery County Engineer (hereinafter the “Engineer”), will be the lead agency for the Project, and will contract directly for all goods, services, and permits required to deliver the Project. To satisfy US Army Corps of Engineers (USACE) compensatory mitigation requirements, the Engineer will obtain stream credits from mitigation banks and/or in lieu fee programs as required by and acceptable to the USACE to mitigate Project impacts to Waters of the United States prior to obtaining a USACE Section 404 Nationwide Permit for construction. The City and the Engineer agree to fund the compensatory mitigation costs attributable to the stream impacts within their own jurisdictions, as more completely described herein. The City agrees that as lead agency, the Engineer shall have final project decision making and approval authority for the Project, including all matters concerning the amount and type of compensatory mitigation used to obtain a USACE Section 404 Nationwide Permit.

II. External Funding. The City and the Engineer will separately pursue external funding for the Project through the Ohio Public Works Commission (OPWC); the City through OPWC District 10 and the Engineer through OPWC District 4. The OPWC funding secured by each agency shall be applied to the portion of Project costs within its own jurisdiction. The funding commitments described herein shall apply to each jurisdiction, irrespective of the amount of OPWC funding received by itself or the other party or when reimbursement for eligible costs are requested or received from OPWC.

Other than OPWC, no additional external funding sources are envisioned to be pursued by either party. If additional external funding is obtained by either party, the City and the Engineer agree that an amendment to this Agreement will be required to establish the allocation of the additional funding.

III. Compensatory Mitigation. The City agrees to be responsible for the compensatory mitigation costs related to the Project’s aquatic resource impacts within the City’s municipal corporation limits as described herein. The Project is currently expected to result in 1,019 linear feet of physical stream impacts, resulting in the purchase of 1,769 feet of stream credits based on the mitigation ratios required for each individual stream. The amount of compensatory mitigation required in each jurisdiction are shown on Exhibit “A”, attached hereto and incorporated herein. In accordance with the stream impact quantities and mitigation ratios shown on Exhibit “A”, the City will be responsible for 65% of the compensatory mitigation costs and the Engineer will be responsible for 35% of the compensatory mitigation costs.

Following determination of final expected stream impact quantities and mitigation ratios and approval of a mitigation plan by the USACE, the Engineer will develop an estimated cost for compensatory mitigation on the Project. The Engineer will invoice the City for its entire share of the anticipated compensatory mitigation cost based on the Engineer's estimate. The City shall remit payment for its share of the compensatory mitigation costs to the Engineer within 30 days of receipt of the Engineer's invoice.

Upon securing a USACE Section 404 Nationwide Permit for the Project, the final actual compensatory mitigation costs attributable to the City will be calculated and an adjustment to the City's prepayment for compensatory mitigation (either credit or debit) will be determined. Following completion of Project construction, the Engineer will invoice the City for final payment as described in the Cost Sharing Agreement for the Right of Way and Construction phases executed under BCC Resolution No. 24-0644, including adjustment of the final compensatory mitigation cost, if necessary. No other credit for in kind services by the City or the Engineer during the permitting process will be considered.

The City may seek reimbursement from OPWC for eligible compensatory mitigation costs at its discretion at any time, in accordance with the terms of its OPWC agreement.

- IV. Term.** The term of this Agreement shall commence on the date of execution by all parties, and shall terminate 90 days after the final Project settlement payment is received.
- V. Modification, Severability, and Governing Law.** This Agreement constitutes a total integration of the entire understanding between the parties and shall not be modified in any manner except by an instrument in writing executed by both parties.

This agreement is governed by the laws of the State of Ohio. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

- VI. Signature.** The City hereby acknowledges that this Agreement must be signed and returned to the Engineer within thirty (30) days of receipt of said Agreement for signature, or this Agreement may be cancelled and voided by the Board.

IN WITNESS WHEREOF, the parties hereto set their hands this ____ day of _____, 2024.

WITNESS:

**BOARD OF COUNTY COMMISSIONERS
MONTGOMERY COUNTY, OHIO**

Signature

By _____
Deborah A. Lieberman, President

Signature

By _____
Judy Dodge

Signature

By _____
Carolyn Rice

OR

Signature

By _____
Michael Colbert, Administrator

APPROVED AS TO FORM:
MATHIAS H. HECK, JR.
Prosecuting Attorney for Montgomery County, Ohio

By _____
Assistant Prosecuting Attorney

Date: _____

WITNESS:

CITY OF FRANKLIN, OHIO

Signature

By _____
Signature

Printed Name _____

Title _____

APPROVED AS TO FORM:

Law Director

CERTIFICATION OF FUNDS:

Finance Director

Date: _____

EXHIBIT "A"

Dayton Cincinnati Pike																									
Retaining Wall Removal and Roadway Realignment Project																									
Location:		Warren and Montgomery Counties, Ohio																							
Sponsor:		Montgomery County Engineers Office																							
By:		RGS																							
Date:		6/13/2024																							
WOTUS Impact Summary																									
Resource Type	Resource ID	Flow Regime	OHWM Width (ft)	Impact Type	Warren County				Montgomery Co.				Impacted Stream Length (ft)		Impact Area (ac)	Permanent Impact (Y/N)	Mitigation Ratio	Mitigated Stream Length (ft)		Notes					
					Begin Station	End Equation	Begin Station	End Equation	City of Franklin	Montgomery County	City of Franklin	Montgomery County													
STREAM	Stream 1	Intermittent	1.9	Pipe							22		0.001	Y	2.0 :1	44.0			Culvert inlet extension from 19' RT to 41' RT at Sta. 100+60						
				Fill	100+60	105+33			473		0.021	Y	2.0 :1	946.0			Final stream bed elevation higher than existing; conversion to roadway ditch with no perennial, intermittent, or ephemeral flow from Sta. 100+60 to Sta. 105+33								
				Fill	105+33	106+30			97		0.004	Y	1.5 :1	145.5			Final stream bed elevation higher than existing; intermittent southerly flow from Stream 1 converted to ephemeral northerly flow from Stream 3								
				Fill			200+00	200+25			25		0.001		1.5 :1		37.5								
				Cut				200+25	203+25			300		0.013	Y	1.5 :1		450.0			Final stream bed elevation lower than existing; intermittent southerly flow from Stream 1 converted to ephemeral northerly flow from Stream 3				
				Pipe								17		0.001	Y	1.5 :1		25.5			South pipe length, inlet to upstream MH				
				Pipe								45		0.002	Y	1.5 :1		67.5			North drive pipe extension to upstream MH				
	Stream 2	Intermittent	3.6	Pipe							26		0.002	Y	1.5 :1		39.0		East drive pipe extension to upstream MH						
	Stream 3	Ephemeral	1.6	Fill							14		0.001	Y	1.0 :1		14.0		Stream 3 shortened at new channel intercept						
	Stream 4	Intermittent	7.0	N/A							0		0.000	N/A	2.0 :1		0.0		No impacts to Stream 4						
	Stream 5	Ephemeral	1.3	N/A							0		0.000	N/A	1.0 :1		0.0		No impacts to Stream 5						
Total STREAM Impacts											606	413	ft	0.045	ac			1,149.5	619.5	ft					
										Total Impacted Length =		1,019		ft											
										Total Mitigated Length =		1,769		ft											
Resource Type	Resource ID			Impact Type							Impact Area (sq ft)		Impact Area (ac)	Permanent Impact (Y/N)				Notes							
WETLAND	Wetland 1			Temporary							220		0.005	N				No permanent construction within or disturbance of Wetland 1							
Total WETLAND Impacts													0.005	ac											