

**CAPITAL IMPROVEMENTS PROJECT
COOPERATIVE RIGHT-OF-WAY ACQUISITION AND UTILITY RELOCATION
AGREEMENT
BETWEEN
CITY OF COLUMBUS, OHIO
AND
CITY OF GAHANNA, OHIO
FOR
ARTERIAL STREET REHABILITATION – HAMILTON ROAD FROM SR-161 TO
MORSE ROAD – PHASE A
CAPITAL IMPROVEMENT PROJECT 530103-100054**

This Cooperative Right-of-Way Acquisition and Utility Relocation Agreement (the “Agreement”), pursuant to Ordinance No. 1930-2015, passed the 27th day of July 2015, is made and entered into this _____ day of _____, 2017 (the “Effective Date”), by and between the City of Columbus, Ohio acting through its Director of Public Service, hereinafter designated as COLUMBUS, and the City of Gahanna, an Ohio municipal corporation, with its offices at 200 South Hamilton Road, Gahanna, Ohio 43230, hereafter designated GAHANNA, collectively referred to as the “Parties”.

WHEREAS, COLUMBUS is engaged in the Arterial Street Rehabilitation – Hamilton Road from SR-161 to Morse Road – Phase A project (the “Project”), which consists of improvements to approximately 1,600 feet of Morse Road on the southern half of Morse Road and the southeast quadrant of the Hamilton Road/Morse Road intersections (the “Improvements”); and

WHEREAS, a portion of the aforementioned improvements are located with GAHANNA city limits; and

WHEREAS, Ordinance No. 1930-2015 authorized COLUMBUS to enter into agreements with GAHANNA whereby GAHANNA agrees to contribute funds toward costs incurred during the completion of the Project; and

WHEREAS, Ordinance No. 0095-2016 and Ordinance No. ____-2017 authorized GAHANNA to enter into agreements with COLUMBUS whereby GAHANNA agrees to permit COLUMBUS to acquire right-of-way for the Project and to contribute funds toward right-of-way acquisition and utility relocation costs incurred during the completion thereof; and

WHEREAS, the Parties have determined that it is necessary to provide for the efficient and coordinated right-of-way acquisition and utility relocation for the Project; and

WHEREAS, the Parties have agreed to enter into a Cooperative Right-of-Way Acquisition and Utility Relocation Agreement to facilitate the right-of-way acquisition and utility relocation necessary for the construction of the Improvements; and

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do hereby covenant and agree, as follows:

1. **DEFINITIONS:**

- A. “**Agreement**” means this Cooperative Right-of-Way Acquisition and Utility Relocation Agreement by and between COLUMBUS and GAHANNA, as duly amended or supplemented from time to time in accordance with its terms.
- B. “**Event of Default**” means an Event of Default under Section 6 of this Agreement.
- C. “**Force Majeure**” means acts of God, fires, epidemics, landslides, floods, strikes, lockouts or other industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents of machinery; transmission piles or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or any cause or event (other than financial inability) not reasonably within the control of the Parties.

2. **COST ESTIMATES AND FUNDING ALLOCATIONS:** The projected cost of right-of-way acquisition and utility relocation for the Project is \$7,898,162.00, a portion of which will be supported by federal funding administered through the Mid-Ohio Regional Planning Commission (MORPC).

Funding for right-of-way acquisition and utility relocation is **estimated** to be provided by MORPC and local contributions as follows:

Phase	Estimate	MORPC	Gahanna Local Share	Columbus Local Share
Right-of-Way Acquisition	\$5,898,162.00	\$4,718,523.00	\$131,634.00	\$721,006.00
Utility Relocation	\$2,000,000.00	\$1,600,000.00	\$36,400.00	\$363,600.00
TOTAL	\$7,898,162.00	\$6,318,523.00	\$168,034.00	\$1,084,606.00

In the event that the final cost of one expense (right-of-way acquisition or utility relocation) is less than the estimate provided above and the cost of the other expense is more than the estimate provided above, and the combined total is not exceeded, funding for one expense can be used for the other upon written approval by GAHANNA.

3. **RIGHT-OF-WAY ACQUISITION:** The Parties agree that COLUMBUS, through the Real Estate Division, shall acquire all right-of-way for the Project and GAHANNA shall pay its proportionate of right-of-way acquisition costs.

A. GAHANNA covenants and agrees:

- (1) To timely finance the actual costs associated with right-of-way acquisition activities and final settlement or judgements for the Project including, but not limited to, legal fees, appraisal fees, negotiator fees, right-of-way consultant fees, recording fees and court costs for parcels in the GAHANNA corporation limits as follows:

Parcel	Parcel ID No.	Current Owner
15-WD	025-011839	Monro Muffler Brake, Inc. a(n) New York Corp.
15-T1	025-011839	Monro Muffler Brake, Inc. a(n) New York Corp.
15-T2	025-011839	Monro Muffler Brake, Inc. a(n) New York Corp.
17-WDV	025-012936	Inland American Gahanna Morse LLC, a Delaware limited liability company
17-CHV	025-012935	Inland American Gahanna Morse LLC, a Delaware limited liability company
17-SV1	025-012935	Inland American Gahanna Morse LLC, a Delaware limited liability company
17-SV2	025-012935	Inland American Gahanna Morse LLC, a Delaware limited liability company
17-T1	025-012936	Inland American Gahanna Morse LLC, a Delaware limited liability company
17-T2	025-012936	Inland American Gahanna Morse LLC, a Delaware limited liability company
19-CHV	025-010880 thru 025-010919	Polo Club Villas Condominium
19-SV1	025-010880 thru 025-010919	Polo Club Villas Condominium
19-SV2	025-010880 thru 025-010919	Polo Club Villas Condominium
19-T	025-010880 thru 025-010919	Polo Club Villas Condominium
22-CHV	025-011359 thru 025-011378	Polo Club Villas Condominium Fourth Amendment
22-T	025-011359 thru 025-011378	Polo Club Villas Condominium Fourth Amendment
24-CHV	None	Polo Club Villas Condominium Fifth Amendment
25-CHV	025-012915 thru 025-012934	Polo Club Villas Condominium Fifth Amendment
25-T	025-012915 thru 025-012934	Village at Sterling Pines Condominium Seventh Amendment

- (2) To remit an initial payment in the amount of \$131,634.00 for that purpose to COLUMBUS within 30 days of final execution of this Agreement.

Payment shall be made out to the City Treasurer – Columbus and delivered to:

Department of Public Service
Office of Support Services
50 W. Gay Street, 5th Floor
Columbus, Ohio 43215
Attn: Capital Fiscal Manager

- (3) To promptly remit additional payment(s) to COLUMBUS upon the timely execution of any modification(s) to this Agreement for necessary cost increases.

B. COLUMBUS covenants and agrees:

- (1) To acquire various property rights attributable to the Project through the Columbus City Attorney's Office, Real Estate Division, provided the necessary funding payment(s) are timely deposited with COLUMBUS.
- (2) To notify GAHANNA of any estimated costs above the initial deposited amount of \$131,634.00, and to draft any modification(s) to this Agreement as necessary to accept additional payment(s) for cost increases.
- (3) To provide copies of recorded deeds to GAHANNA for right-of-way within its corporation limits associated with the Improvements.
- (4) In the event appropriation is required, COLUMBUS shall file and litigate all right-of-way acquisitions required for the Project including within the City of Gahanna corporate jurisdiction in accordance with City of Gahanna Ordinance 0095-2016 and the letter of understanding dated August 24, 2016, from COLUMBUS to GAHANNA.

4. **UTILITY RELOCATION:** The Parties agree that COLUMBUS shall coordinate utility relocation for the Project and GAHANNA shall pay its proportionate share of utility relocation costs.

A. GAHANNA covenants and agrees:

- (1) To finance a portion of costs associated with utility relocation for the Project.
- (2) To timely remit an initial payment in the amount of \$36,400.00 for that purpose to COLUMBUS within 30 days of final execution of this Agreement.
- (3) To promptly remit additional payment(s) to COLUMBUS upon the timely execution of any modification(s) to this Agreement for necessary cost increases.

B. COLUMBUS covenants and agrees:

- (1) To notify GAHANNA of any estimated costs above the initial deposited amount of \$36,400.00, and to draft any modification(s) to this Agreement as necessary to accept additional payment(s) for cost increases.
 - (2) To provide copies of all utility relocation plans, estimates, easements, and calculated funding splits to GAHANNA prior to authorizing construction of utility relocation work.
5. **AUTHORITY TO BIND:** The signatories to this Agreement represent that they have the authority to bind themselves and their respective organizations to this Agreement.
6. **BINDING EFFECT:** This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. The Parties will observe and perform faithfully at all times all covenants, agreements, and obligations under this Agreement.
7. **GOVERNING LAW AND CHOICE OF FORUM:** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes, and other matters in question between COLUMBUS, its agents and employees, and GAHANNA, its agents and employees, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County of Franklin, State of Ohio.
8. **EVENTS OF DEFAULT AND REMEDIES:**
 - A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either Party hereto, or any successor to such Party, such party of successor shall, upon written notice from the other, proceed promptly to cure or remedy such default or breach. In case such remedial action is not taken or not diligently pursued within thirty (30) days of such written notice, the Party asserting default or breach may institute such proceedings at law or in equity as may be necessary or desirable in its opinion to remedy such default or breach.
 - B. Notwithstanding the preceding paragraph, if by reason of Force Majeure any Party fails in the observance or performance of any of its agreements, duties, or obligations to be observed or performed under this Agreement, the Party shall not be deemed to be in default under this agreement. The Party will give notice promptly to the others of any event of Force Majeure and will use its best efforts to remedy that event with all reasonable dispatch; provided that a Party will not be required to settle strikes, lockouts or other industrial disturbances by acceding to the demands of any opposing Person, when in that Party's judgment, that course would be unfavorable to it; and no suspension will constitute an Event of Default if that suspension is a result of the application of federal or State wage, price or economic stabilization controls, cost containment requirements, restrictions on rates or charges, which prevents the Party from observing and performing the applicable covenant, agreement or obligation.

C. The declaration of an Event of Default hereunder and the exercise of rights, remedies and powers upon the declaration are subject to any application limitations of federal or bankruptcy law affecting or precluding the declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

9. **NONEXCLUSIVE REMEDIES:** The remedies provided for in this Agreement shall not be exclusive but are in addition to all other remedies available under law.

10. **DISPUTE RESOLUTION:** In the event a dispute arises regarding any terms and conditions contained in this Agreement, which is not an Event of Default under Section 6, notification of such dispute shall be sent to the responsible Party in writing. In such notification, the aggrieved Party shall present such evidence as may support its position. Within ten (10) calendar days of receipt of said notification, the Parties shall review the facts and circumstances surrounding the dispute for the purpose of determination. If the Parties cannot come to agreement on the dispute, each Party may seek any remedies available to it.

11. **SEVERABILITY:** If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions for the Agreement are declared severable.

12. **MODIFICATIONS:** No modification, amendment, alteration, addition, or waiver of any section or condition of this Agreement shall be effective or binding unless it is in writing and signed by authorized representatives of COLUMBUS and GAHANNA and approved by appropriate authorities.

13. **NOTICES:** Except as otherwise set forth in this Agreement, any notice or demand or other communication required or permitted to be given under the Agreement hereunder shall be deemed sufficiently given if it is in writing, properly addressed, and either hand-delivered, sent by a recognized courier service, or deposited with the United State Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the Parties at the following addresses:

Tom Crawford
Capital Fiscal Manager
Department of Public Service
Office of Support Services
50 W. Gay Street, 5th Floor
Columbus, Ohio 43215
(614) 645-1687
tlcrawford@columbus.gov

Robert Priestas
City Engineer
City of Gahanna
200 S. Hamilton Road
Gahanna, Ohio 43230
614.342.4055
robert.priestas@gahanna.gov

14. **ENTIRE AGREEMENT:** This Agreement shall constitute the entire agreement between the Parties and shall supersede all prior agreements, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the matters herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers on the dates appearing below.

CITY OF COLUMBUS

CITY OF GAHANNA

Jennifer Gallagher, Director
Department of Public Service

Thomas Kneeland, Mayor

Date

Date

**APPROVED AS TO FORM AND
CORRECTNESS:**

**APPROVED AS TO FORM AND
CORRECTNESS:**

Richard C. Pfeiffer, Jr.
Columbus City Attorney

Shane Ewald
Gahanna City Attorney

Date

Date