

ODOT Agreement No. _____xxxxxxx

**AGREEMENT
BETWEEN THE STATE OF OHIO,
DEPARTMENT OF TRANSPORTATION
AND City of Gahanna
TO MAINTAIN THE HIGHWAY LANDSCAPING AT THE INTERCHANGE OR
HIGHWAY CORRIDOR OF
FRA I-270 at SR317 SML 37.36**

This agreement is made 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 City of Gahanna (hereinafter referred to as the "APPLICANT"), 200 S. Hamilton Rd., Gahanna, OH 43230.

1. PURPOSE

- 1.1 Sections 5501.11(D) and 5501.31 of the Ohio Revised Code provides that ODOT may cooperate with municipal corporations in the establishment, construction, reconstruction, and improvement of public roads and bridges.
- 1.2 Section 5501.03(A)(3) of the Ohio Revised Code provides that the Director of Transportation may coordinate the activities of the Department of Transportation with other appropriate public authorities and enter into contracts with such authorities as necessary to carry out its duties, powers and functions.
- 1.3 The APPLICANT is willing to provide materials and, by way of construction, the costs associated with constructing the improvements, and is willing fully to cooperate with ODOT in completing and maintaining the PROJECT and ODOT is willing to accept the contribution under certain conditions.

2. SCOPE OF WORK

- 2.1 The work to be performed under this Agreement shall consist of the following:

The design and construction of OSU Research Planting landscape plantings as fully described in the vegetation

EXHIBIT A

maintenance plans titled OSU Study #962, and approved by
ODOT, District Six Permit Office, and ODOT Agreement No.
xxxxxxx.

- 2.2 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 ("Plans and Specifications"), as agreed to by the APPLICANT.

3. **OBLIGATION OF THE APPLICANT**

- 3.1 The APPLICANT agrees to furnish, at no cost to ODOT, a complete set of the Plans and Specifications of the PROJECT prepared by Bird Houk/OSU/Gahanna, and to submit the same in a timely manner for review and approval by ODOT and, if necessary, the FHWA.
- 3.2 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.
- 3.3 The APPLICANT agrees to pay the entire cost of the PROJECT including, but not limited to, OSU Research and landscape plantings, as detailed in the Plans and Specifications and in subsequent change orders. As herein, "cost" means that total initial contract price adjusted upward or downward for change orders and claims made under the Construction and Material Specifications or under this Agreement.
- 3.4 The APPLICANT agrees to pay all costs and perform all construction, inspection, supervision, sampling and testing for the PROJECT.
- 3.5 The APPLICANT agrees to provide ODOT an executed copy of the Contract Agreement between the APPLICANT and its contractor.

4. **OBLIGATIONS OF ODOT**

- 4.1 ODOT agrees to grant to the APPLICANT a permit to use and occupy the ramps and rights-of-way in and abutting FRA I-270 for purposes of this PROJECT.

5. **LANDSCAPE REQUIREMENTS**

- 5.1 The landscaping of the PROJECT will be accomplished by the APPLICANT letting a contract to a contractor or by the APPLICANT's own forces.
- 5.2 The APPLICANT shall prepare Plans and Specifications for any change orders required for satisfactory completion of the work.
- 5.3 The APPLICANT shall certify that the landscaping 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.
- 5.4 If the APPLICANT does anything contrary to the approved plans and specification and after due notice, fails to correct such action, ODOT may take those measures contained in the Construction and Materials Specifications to ensure full restitution and compliance.
- 5.5 Highway property, disturbed by the APPLICANT, shall be restored using materials, design and workmanship in conformance with the Ohio Department of Transportation Construction and Material Specifications, Location and Design Manual, or other existing Department Standards.
- 5.6 All work requiring men or vehicles on the pavement or shoulders shall comply with all of the requirements of the Ohio Manual of Uniform Traffic Control Devices and Item 614 (Maintaining Traffic) of the Ohio Department of Transportation Construction and Materials Specifications. Failure to comply with the requirement will be cause for immediate suspension of contract work until the proper traffic controls have been provided.
- 5.7 The APPLICANT, upon completion of the work, shall leave the highway clean of

all rubbish, excess materials, temporary structures and equipment and all parts of the highway disturbed by the PROJECT shall be left in acceptable condition.

6. **NOTICE**

6.1 Notice under this Agreement shall be directed as follows:

Applicant's Name: City of Gahanna
Address: 200 S. Hamilton Rd.
Gahanna, OH 43230
Attn: Michael Andrako
Telephone: 614.342.4050

Ohio Department of Transportation
Address: 400 E. William St.
Delaware, OH 43015
Attn: Charles Duerson
Telephone: 740.833.8244

7. **BREACH OF CONTRACT**

7.1 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.

7.2 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 APPLICANT shall have thirty days or a time negotiated with ODOT from the date of such notification to remedy the causes preventing its compliance and curing the default situation. Expiration of the thirty days or negotiated time and failure by the APPLICANT to remedy the default shall result in termination of this Agreement by ODOT.

7.3 Upon a termination of this Agreement by ODOT, ODOT shall conduct an inspection of the PROJECT to determine whether or not the PROJECT has been

completed to a degree acceptable to ODOT. If the PROJECT is not completed to a degree and condition acceptable to ODOT, then ODOT may take any measures necessary to complete the PROJECT. The APPLICANT shall be held responsible for full restitution of all expenses incurred in completing the PROJECT.

- 7.4 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 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.

8. **MAINTENANCE**

- 8.1 The APPLICANT agrees to keep the exit and entrance ramps to the interchange or corridor of FRA I-270 open to traffic at all times while performing any maintenance activities.
- 8.2 The APPLICANT agrees to perform all maintenance activities required by industry practices to maintain the PROJECT in an attractive manner. "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. (Provide an attachment to this section what maintenance activities will take place, when they will take place how often, and any other specifics concerning the maintenance of the project.)
- 8.3 The APPLICANT agrees to make ample financial and other provisions for such maintenance of the PROJECT after its completion.
- 8.4 ODOT agrees to grant to the APPLICANT any necessary permits to use and occupy the ramps and rights-of-way in and abutting FRA I-270 for purposes of

maintaining and landscaping, in an attractive manner.

- 8.5 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.

9. **GENERAL PROVISIONS**

- 9.1 The signing of the Agreement does not in any way abridge the right of the Director of Transportation in his jurisdiction over the state highway system.
- 9.2 This Agreement and Permit No. 06-xxxx-11 constitutes the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement.
- 9.3 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. Any change to the provisions of this Agreement must be made in a written amendment executed by both parties.
- 9.4 This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio.
- 9.5 The District Deputy Director of District Six shall have full authority to ensure the full compliance of the provisions of this Agreement.
- 9.6 The signing of the Agreement or the doing of any work thereunder shall constitute an agreement by the APPLICANT to comply with all of the conditions and restrictions of this Agreement and the Permit printed or written herein.
- 9.7 The APPLICANT shall save harmless the State of Ohio and all of its representatives 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.

- 9.8 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.
- 9.9 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 and the APPLICANT.

10. **TERMINATION**

- 10.1 Either party may terminate this agreement by giving the other party ninety (90) days written notice. Partial or complete forfeiture of the bond may be required in order for the Department to continue maintaining the affected area for the remaining duration of the two year maintenance agreement.
- 10.2 All maintenance obligations of the APPLICANT shall commence upon completion of the PROJECT and shall expire two years thereafter, unless otherwise extended by mutual agreement of both parties.

11. **SIGNATURES**

11.1 Any person executing this agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this agreement on such principal's behalf.

THE STATE OF OHIO
Department of Transportation

City of Gahanna
(Applicant's Organization Name)

(Signature)

Jerry Wray

(Name)

Director

(Title)

Date: _____

Date: _____