

DATE: FEBRUARY 3, 2014

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
TONY M. TOWNSEND, PRESIDENT

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 12 - 2014

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to sign the Jobs and Commerce Economic Development Agreement between the Ohio Department of Transportation and the City of Massillon for the 9<sup>th</sup> Street SW Improvement Project, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby finds that it is necessary to sign the Jobs and Commerce Economic Development Agreement between the Ohio Department of Transportation and the City of Massillon for the 9<sup>th</sup> Street SW Improvement Project.

Section 2:

The Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized to sign the Jobs and Commerce Economic Development Agreement between the Ohio Department of Transportation and the City of Massillon for the 9<sup>th</sup> Street SW Improvement Project. The City of Massillon was awarded funds for the 9<sup>th</sup> Street SW Improvement Project from OPWC; the \$200,000.00 reimbursement grant will go towards the project costs. Projects limits along 9<sup>th</sup> Street SW are Oberlin Road SW to Albrecht Avenue SW within the City of Massillon Corporation Limits. The main project components consist of items such as the widening of the deteriorated roadway with full depth pavement replacement; installation of a storm sewer system including catch basins and manholes along with varying size piping.

(SEE EXHIBIT "A" HERETO ATTACHED)

Section 3:

The Clerk of Council is authorized to correct any typographical errors discovered herein during or after the pendency or passage of this ordinance. The Clerk of Council is further authorized, in conjunction with the Law Department and the Council President to correct any ministerial or de minimis errors that do not substantially alter the intended results or numerical total sums of this ordinance, during or after the pendency or passage of this ordinance. Corrected copies are to be sent to all official recipients.

Section 4:

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety, and welfare of the community, and for the reason that it is necessary to sign the Jobs and Commerce Economic Development Agreement between the Ohio Department of Transportation and the City of Massillon for the 9<sup>th</sup> Street SW Improvement Project. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS 3<sup>rd</sup> DAY OF February 2014

APPROVED:

Mary Beth Bailey  
MARY BETH BAILEY, CLERK OF COUNCIL

Tony Townsend  
TONY M. TOWNSEND, PRESIDENT

APPROVED

February 5, 2014

Kathy Catazaro-Perry  
KATHY CATAZARO-PERRY, MAYOR

I hereby certify that the foregoing ordinance is a true copy of the original, as passed by the Council of the City of Massillon, Ohio, and approved as noted thereon:

Mary Beth Bailey  
Clerk of Council

Date 2/3/14

# **JOBS AND COMMERCE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION AND CITY OF MASSILLON**

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the City of Massillon, 151 Lincoln Way E, Massillon, OH 44646 (hereinafter referred to as the CITY).

## 1. PURPOSE

- 1.1 Section 5501.03(A)(3) of the Ohio Revised Code (ORC) provides that ODOT may coordinate its activities with those of other appropriate state departments, public agencies, and authorities, and enter into any contracts with such departments, agencies, and authorities as may be necessary to carry out its duties, powers, and functions.
- 1.2 ORC § 5501.11(A)(4) states the department of transportation with respect to highways shall cooperate with the counties, municipal corporations, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance, repair, and improvement of the public roads and bridges.
- 1.3 The CITY is constructing road improvements to widen and repair deteriorated roadway with full depth pavement replacement of 9<sup>th</sup> Street SW (hereinafter referred to as the PROJECT). The ODOT program funds identified in this agreement are to be utilized for improvements to 9<sup>th</sup> Street SW from Oberlin Road SW to Albrecht Ave SW.
- 1.4 The purpose of this Agreement is to set forth the responsibilities of the parties associated with the Jobs & Commerce Economic Development ("JCED") program funding (SAC 4JC7) that is being made available for the PROJECT by ODOT.
- 1.5 The CITY shall comply with all applicable Federal and State laws, regulations, and applicable executive orders in regards to the PROJECT. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

## 2. FUNDING AND PAYMENT

- 2.1 The total cost for the PROJECT is estimated to be \$1,672,000 as set forth below. Funds provided through ODOT shall be applied only to the eligible costs associated with the actual construction of the PROJECT improvements and construction engineering/inspection activities.

ODOT Jobs & Commerce ED Program Funds	\$200,000
OPWC	\$1,344,000
Local Fund Source(s) (up to amount)	\$ 128,000
TOTAL	<u>\$1,672,000</u>

- 2.2 Funds provided by ODOT shall not exceed \$200,000.00 or 12 percent of the total PROJECT cost, whichever is the lesser amount. The CITY shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.
- 2.3 All funding from ODOT under this Agreement operates on a reimbursement basis. The CITY shall review and/or approve all invoices for materials, equipment and labor prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.
- 2.4 The CITY shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The CITY 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. The CITY may submit a maximum of two requests for reimbursement at quarterly intervals. The deadline for the final reimbursement request is December 31, 2014.
- 2.5 Reimbursement to the CITY shall be submitted to:

Massillon City Engineer  
Keith Dylewski  
151 Lincoln Way E,  
Massillon, OH 44646  
(330) 830-1722

### 3. PROJECT DEVELOPMENT AND DESIGN

- 3.1 The CITY is administering this PROJECT and is responsible for all aspects of the project, including but not limited to: environmental responsibilities, permit requirements, right of way or utility reimbursement, and construction contract administration.
- 3.2 Any right, claim, interest, and/or right of action, whether contingent or vested, of the CITY, arising out of or related to any contract entered into by the CITY for the work to be performed by the Contractor on this PROJECT is the responsibility of the CITY. ODOT expressly rejects any liability for the PROJECT and any claims arising from the PROJECT.

4. CERTIFICATION AND RECAPTURE OF FUNDS

4.1 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 Ohio Revised Code 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.

4.2 If for any reason the PROJECT is found to not be in compliance with all applicable local, state, or federal rules and processes the CITY shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT.

5. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

5.1 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 Revised Code.

5.2 The CITY 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 CITY's obligations made or agreed to herein.

6. NOTICE

6.1 Notice under this Agreement shall be directed as follows:

If to the CITY:

Massillon City Engineer  
Keith Dylewski  
151 Lincoln Way E,  
Massillon, OH 44646  
(330) 830-1722

If to ODOT:

Christina Wagner, Regional Manager  
Office of Jobs & Commerce, ODOT  
2208 S Arlington Rd  
Akron, OH 44306  
(330)786-3122

7. GENERAL PROVISIONS

7.1 *Record Retention:* The CITY 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 books, documents, and records relating to the CITY's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years. 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.

- 7.2 *Ohio Ethics Laws:* CITY agrees that 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 Ohio Revised Code.
- 7.3 *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 CITY 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.
- 7.4 *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.
- 7.5 *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.
- 7.6 *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.
- 7.7 *Term of Agreement:* This Agreement shall be in effect from the last day executed by the parties through the date which is three (3) years after the Project Completion Date. CITY acknowledges that the Term extends beyond the Project Completion Date for purposes of reporting by the CITY and monitoring by Grantor of the results of the award of Grant Funds.
- 7.8 *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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

MAYOR OF MASSILLON  
OR AUTHORIZED REPRESENTATIVE

STATE OF OHIO  
OHIO DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

By: \_\_\_\_\_

Jerry Wray  
Director

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