

DATE: APRIL 7, 2014

CLERK: MARY BETH BAILEY

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

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 39 - 2014

BY: STREET, HIGHWAYS, TRAFFIC & SAFETY COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to sign the contract with the Ohio Department of Transportation for the SR 241 Paving 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 contract with the Ohio Department of Transportation for the SR 241 Paving Project.

Section 2:

The Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized to sign the contract with the Ohio Department of Transportation for the SR 241 Paving Project. The project funding will be 80/20 with ODOT being responsible for 80% and the City 20% of all project cost unless the city requests items for the project deemed unnecessary by the State and Federal Highway Administration. The project limits are from SR 93 to Erie Street South with construction set to commence in 2013.

(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 Preliminary Legislation with Ohio Department of Transportation so as to proceed with the SR 241 Paving 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 7<sup>th</sup> DAY OF April 2014

APPROVED:

Mary Beth Bailey  
MARY BETH BAILEY, CLERK OF COUNCIL

Tony Townsend  
TONY M. TOWNSEND, PRESIDENT

APPROVED

April 14, 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

4/7/14

**CONTRACT**  
(Chapter 5521, Ohio Revised Code)

This contract is made by and between the State of Ohio, Department of Transportation, acting through its director (hereinafter referred to as the "STATE"), 1980 West Broad Street, Columbus, Ohio 43223, and the City of Massillon, (hereinafter referred to as the legislative authority/Local Public Agency or "LPA").

**WITNESSTH:**

**WHEREAS**, Chapter 5521 of the Ohio Revised Code provides that the legislative authority may cooperate with the STATE in a highway project made by and under the supervision of the Director of Transportation; and

**WHEREAS**, through the enactment of preliminary legislation, the LPA and the STATE have agreed to cooperate in the highway project described below; and

**WHEREAS**, through the enactment of final legislation, the LPA has committed to pay an estimated amount of money as its share of the total estimated cost and expense of the highway project described below; and

**WHEREAS**, the fiscal officer of the LPA has filed with the LPA a certificate stating that sufficient moneys are available, as required by Chapter 5521 and Section 5705.41 of the Ohio Revised Code. A duplicate certificate is attached hereto; and

**WHEREAS**, in accordance with the final legislation, the LPA hereby enters into this contract with the STATE to provide for payment of the agreed portion of the cost of the highway project and any additional obligations for the highway project described below.

**NOW, THEREFORE**, in consideration of the premises and the performances of mutual covenants hereinafter set forth, it is agreed by parties hereto as follows:

**SECTION I:**        **RECITALS**

The foregoing recitals are hereby incorporated as a material part of this contract.

**SECTION II:**       **PURPOSE**

The purpose of this contract is to set forth requirements associated with the highway project described below (hereinafter referred to as the "PROJECT") and to establish the responsibilities for the administration of the PROJECT by the LPA and the STATE.

**SECTION III: LEGAL REFERENCES**

This contract is established pursuant to Chapter 5521 of the Ohio Revised Code.

**SECTION IV: SCOPE OF WORK**

The work to be performed under this contract shall consist of the following:

**The project consists of resurfacing of various points and some bridgework, lying within the City of Massillon.**

**SECTION V: FINANCIAL PARTICIPATION**

1. The STATE agrees to provide the necessary funds as enumerated in this section and allowed by law for the financing of this project.
2. The STATE may allocate the money contributed by the LPA in whatever manner it deems necessary in financing the cost of construction, right-of-way, engineering, and incidental expenses, notwithstanding the percentage basis of contribution by the LPA.
3. The total cost and expenses for the project are only an estimate and the total cost and expenses may be adjusted by the STATE. If any adjustments are required, payment of additional funds shall correspond with the percentages of actual costs when said actual costs are determined, and as requested, by the Director of Transportation.
4. The LPA agrees to pay to the STATE its share of the total estimated cost expense for the above highway project in the amount of **One Hundred Two Thousand five Hundred Fifty and - - - 00/100 Dollars, (\$102,550.00).**
5. **The City agrees to assume and bear one hundred percent (100%) of the entire cost of the improvement within city limits, less the amount of Federal-aid and State funds set aside by the Director of Transportation for the financing of this improvement from funds allocated by the Federal Highway Administration, U.S. Department of Transportation.**
6. The LPA agrees to assume and bear One Hundred Percent (100%) of the cost of any construction items required by the LPA on the entire project, which are not necessary for the improvement, as determined by the State and Federal Highway Administration.
7. The LPA agrees that change orders and extra work contracts required fulfilling the construction contracts shall be processed as needed. The STATE shall not approve a change order or extra work contract until it first gives notice, in writing, to the LPA. The LPA shall contribute its share of the cost of these items in accordance with other sections herein.

**SECTION VI: RIGHT-OF-WAY AND UTILITIES**

1. The LPA agrees that all right-of-way required for the described project will be acquired and/or made available in accordance with current State and Federal regulations. The LPA also understands that right-of-way costs include eligible utility costs.
2. The LPA agrees that all utility accommodation, relocation, and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual, including that:
  - A. Arrangements have been or will be made with all utilities where facilities are affected by the described PROJECT, that the utilities have agreed to make all necessary removals and/or relocations to clear any construction called for by the plans of this PROJECT, and that the utilities have agreed to make the necessary removals and/or relocations after notification by the LPA or STATE.
  - B. The LPA shall, at its own expense, make all removals and/or relocations of publicly-owned utilities which do not comply with the reimbursement provisions of the ODOT Utilities Manual. Publicly-owned facilities which do comply with the reimbursement provisions of the ODOT Utilities Manual will be removed and/or relocated at project expense, exclusive of betterments.
  - C. The removals and/or relocation of all utilities shall be done in such a manner as not to interfere with the operation of the contractor constructing the PROJECT and that the utility removals and/or relocations shall be approved by the STATE and performed in accordance with the provisions of the ODOT Construction and Materials Specifications.

**SECTION VII: ADDITIONAL PROJECT OBLIGATIONS**

1. The STATE shall initiate the competitive bid letting, process and award the PROJECT in accordance with ODOT's policies and procedures.
2. The LPA agrees:
  - A. To keep said highway open to traffic at all times;
  - B. To maintain the PROJECT in accordance with the provisions of the statutes relating thereto,
  - C. To make ample financial and other provisions for such maintenance of the PROJECT after its completion;
  - D. To maintain the right-of-way and keep it free of obstructions in a manner satisfactory to the STATE and hold said right-of-way inviolate for public highway purposes;

- E. To place and maintain all traffic control devices conforming to the Ohio Manual on Uniform Traffic Control Devices on the project in compliance with the provisions of Section 4511.11 of the Ohio Revised Code;
- F. To regulate parking in accordance with Section 4511.66 of the Ohio Revised Code, unless otherwise controlled by local ordinance or resolution.

**SECTION VIII: DISPUTES**

In the event that any disputes arise between the STATE and LPA concerning interruption of or performance pursuant to this contract, such disputes shall be resolved solely and finally by the Director of Transportation.

**SECTION IX: NOTICE**

Notice under this contract shall be directed as follows:

City of Massillon  
One James Duncan Plaza S.E.  
Massillon, Ohio  
44646

Ohio Department of Transportation  
Office of Estimating  
1980 West Broad Street, 1st Floor  
Columbus, Ohio 43223

**SECTION X: FEDERAL REQUIREMENTS**

1. In carrying out this contract, LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, or age. LPA will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, disability, or age. Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.
2. To the extent necessary under Ohio law, LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. LPA will, in all solicitations or advertisements for employees placed by or on behalf of LPA, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, or age. If applicable, the LPA shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.



3. LPA agrees to fully comply with Title VI of the Civil Rights Act of 1964, 42 USC Sec. 2000. LPA shall not discriminate on the basis of race, color, or national origin in its programs or activities. The Director of Transportation may monitor the Contractor's compliance with Title VI.

**SECTION XI: GENERAL PROVISIONS**

1. This contract constitutes the entire contract between the parties. All prior discussions and understandings between the parties are superseded by this contract.
2. Neither this contract 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.
3. Any change to the provisions of this contract must be made in a written amendment executed by both parties.
4. This contract and any claims arising out of this contract shall be governed by the laws of the State of Ohio. Any provision of this contract prohibited by the law of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this contract or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that the STATE is a party to any litigation arising out of or relating in any way to this contract or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
5. All financial obligations of the State of Ohio, as provided in this contract, are subject to the provisions of Section 126.07 of the Ohio Revised Code. The financial obligations of the State of Ohio shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by the STATE. Additionally, it is understood that this financial obligation of the LPA shall not be valid and enforceable unless funds are appropriated by the LPA's legislative body.
6. This contract shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.
7. LPA agrees that it is 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.

**SECTION XI: SIGNATURES**

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

IN WITNESS THEREOF, the parties hereto have caused this contract to be duly executed in duplicate.

SEAL  
(If Applicable)

OHIO DEPARTMENT OF  
TRANSPORTATION

LOCAL PUBLIC AGENCY  
City of Massillon

\_\_\_\_\_  
Director of Transportation

\_\_\_\_\_  
Director of Public Service & Safety

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved:  
Mike DeWine  
Attorney General of Ohio

By: \_\_\_\_\_  
Stephen H. Johnson  
Chief, Transportation Section

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