

RESOLUTION NO. 16-731

**A RESOLUTION AUTHORIZING THE VILLAGE MANAGER
TO EXECUTE AN AGREEMENT WITH THE STATE OF OHIO,
DEPARTMENT OF TRANSPORTATION FOR THE REALIGNMENT OF
MONTGOMERY, STEWART, AND EUCLID ROADS**

WHEREAS, the intersection of Montgomery Road and Stewart Road is misaligned for access to the new Silverton Paideia School site and representatives of Cincinnati Public Schools have urged the Village to improve pedestrian and vehicular safety for students, parents, visitors, and faculty; and

WHEREAS, the Village of Silverton has full authority to exercise its police powers to promote the public's health, safety, morals, and general welfare by replacing roadways which are misaligned, aging, unsafe, inadequate for current or future traffic demands, and threatening to public safety, and

WHEREAS, the Village of Silverton undertook of its own accord a traffic study in June of 2015 that determined the current and future level of service at Montgomery Road, Stewart Road, and Euclid Road was not acceptable, and made application to the Ohio Public Works Commission for \$1.5 million in funding to assist with a corrective roadway project in September of 2015, and

WHEREAS, despite the fact that the Village's application to the Ohio Public Works Commission in 2015 was ranked second under the scoring criteria for District 2, the project was not funded due to the fact that a loan-grant combination Silverton sought is not permissible under the Local Transportation Improvement Program rules, and

WHEREAS, recognizing the need to realign the Montgomery and Stewart intersection even if the construction funding was not provided, Silverton undertook \$150,000 of design expenses in 2016 to prepare for the needed project's commencement at the earliest date possible, and

WHEREAS, because the Village has acquired fee simple ownership of numerous properties along Montgomery Road and Stewart Road between 2014 and 2016, the Village is in a unique position to dedicate most but not all of the right of way it needs to realign the roadways to improve future levels of service and improve safety. Additional right of way is necessary from 6819 and 6825 Stewart Road, and 7430 and 7458 Montgomery Road, and

WHEREAS, the Village of Silverton sought funding to assist with needed right of way acquisition in 2016 for this project through the Transportation Improvement District, or TID, but was unsuccessful in this highly competitive statewide funding program, and

WHEREAS, despite not receiving TID funding for this project, the Ohio Department of Transportation nevertheless feels it worthy enough to support Silverton's project and has offered to provide \$240,000 to assist the Village of Silverton under the terms of a standard agreement.

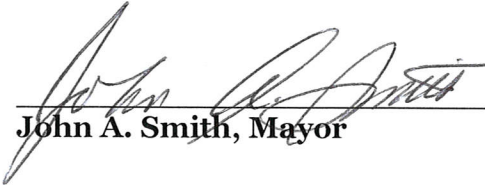
NOW THEREFORE BE IT RESOLVED by the Council of the City of Silverton, that:

SECTION I. The Village Manager is hereby authorized to enter into the agreement, attached hereto and made a part hereof as exhibit A, with the State of Ohio Department of Transportation to facilitate the acquisition of right of way needed for the full execution of its policing powers to promote the public's

health, safety, morals, and general welfare be realigning the roadways at Montgomery, Stewart, and Euclid Roads.

SECTION II. This Resolution shall take effect and be in force from and after its passage and approval.

Passed this 15th day of September, 2016.



John A. Smith, Mayor

ATTEST:



Tom Carroll, Village Manager

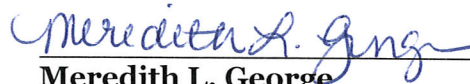
Approved as to form:



Alan Abes, Acting Village Solicitor

CERTIFICATION:

I, Meredith L. George, Clerk of Council of the Village of Silverton, County of Hamilton, State of Ohio; do hereby certify that there is no newspaper published in said municipality and that publication of the foregoing Resolution No. 16-731 has been duly made by posting true copies in three (3) of the most public places in said municipality, as determined by Council as follows: 1) Parkview Lane at Railroad; 2) Silverton Municipal Building and 3) The Village of Silverton's Website. Said posting was for a period of fifteen days commencing September 16, 2016.



Meredith L. George
Clerk of Council of Silverton, Ohio

**JOBS AND COMMERCE ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION AND
VILLAGE OF SILVERTON**

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 W. Broad Street, Columbus, Ohio 43223, and the Village of Silverton, 6860 Plainfield Road, Silverton, Ohio 45236 (hereinafter referred to as the VILLAGE).

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 and agreements 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 VILLAGE will improve Montgomery Road, from Stoll Road to Stewart Road, and Stewart Road, from Montgomery Road to Euclid Avenue, to include major widening and upgrades to traffic signalization and pedestrian crossings (hereinafter referred to as the PROJECT).
- 1.4 The purpose of this Agreement is to set forth the responsibilities of the parties associated with the Jobs & Commerce Economic Development Program ("JCED") funding (SAC 4JC7) that is being made available for the PROJECT by ODOT.
- 1.5 The VILLAGE 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 \$1,790,000 as set forth below. Funds provided through ODOT shall be applied only to the eligible costs associated with right of way, actual construction of the PROJECT improvements and construction engineering/inspection activities.

ODOT JCED Funds – SAC 4JC7	240,000
Local Source(s)	800,000
OPWC or other grant	750,000
TOTAL	\$1,790,000.00

- 2.2 Funds provided by ODOT shall not exceed \$240,000 or 14 percent of the total project cost, whichever is the lesser amount. The VILLAGE shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and VILLAGE claims.
- 2.3 All funding from ODOT under this Agreement operates on a reimbursement basis. The VILLAGE shall review and 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 VILLAGE shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The VILLAGE 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 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 VILLAGE may submit a maximum of two requests for reimbursement. The deadline for the final reimbursement request is May 30, 2017.
- 2.5 Reimbursement to the VILLAGE shall be submitted to:

Village of Silverton
Tom Carroll, Village Manager
6860 Plainfield Road
Silverton, OH 45236

3. PROJECT DEVELOPMENT AND DESIGN

- 3.1 The VILLAGE 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 VILLAGE, arising out of or related to any contract entered into by the VILLAGE for the work to be performed by the VILLAGE on this PROJECT is the responsibility of the VILLAGE. 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 VILLAGE 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 VILLAGE 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 VILLAGE's obligations made or agreed to herein.

6. NOTICE

- 6.1 Notice under this Agreement shall be directed as follows:

If to the VILLAGE:

Village of Silverton
Tom Carroll, Village Manager
6860 Plainfield Road
Silverton, OH 45236
513-792-6560
tcarroll@silvertonoh.us

If to ODOT:

Melissa Taylor, Regional Manager
Office of Jobs & Commerce, ODOT
505 South SR 741
Mail Stop: 3500
Lebanon, OH 45036
513-933-6155

7. FEDERAL REQUIREMENTS

During the performance of this Agreement, the VILLAGE, for itself, its assignees, and successors in interest agrees as follows:

- 7.1 The VILLAGE will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future). Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.
- 7.2 The VILLAGE agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The VILLAGE will, in all solicitations or advertisements for employees placed by or on behalf of the VILLAGE, state that

all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, or future).

- 7.3 Compliance with Regulations: The VILLAGE (hereinafter includes consultants) will comply with the Acts and Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 7.4 Nondiscrimination: The VILLAGE, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, low-income status, or limited English proficiency in the selection and retention of the VILLAGE, including procurements of materials and leases of equipment. The VILLAGE will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 7.5 Solicitations for the VILLAGE, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the VILLAGE for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by the VILLAGE of the VILLAGE's obligations under this contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, national origin (ancestry), sex, age (40 years or older), disability, low-income status, or limited English proficiency.
- 7.6 Information and Reports: The VILLAGE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the ODOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the VILLAGE will so certify to ODOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 7.7 Sanctions for Noncompliance: In the event of the VILLAGE's noncompliance with the nondiscrimination provisions of this Agreement, ODOT will impose such sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
- a) Withholding of payments to the VILLAGE under the Agreement until the VILLAGE complies, and/or
 - b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- 7.8 Incorporation of Provisions: The VILLAGE will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The VILLAGE will take action with respect to any subcontract or procurement as ODOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the VILLAGE becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, the VILLAGE may request ODOT to enter into any litigation to protect the interests of ODOT. In addition, the VILLAGE may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this Agreement, the VILLAGE, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects)
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex)
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age)
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex)
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and VILLAGE (or other)s, whether such programs or activities are Federally funded or not)
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities)
- The Federal Aviation Administration’s Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex)
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)
- Executive Order 13166, Improving Access to Services for People with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100)
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (prohibits discrimination in the sale, rental, and financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status (presence of child under the age of 18 and pregnant women)
- Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 et seq.) (prohibits discrimination on the basis of sex in education programs or activities)
- Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335) (prohibits discrimination on the basis of present, past or future military service)

8. GENERAL PROVISIONS


8.1 *Record Retention:* The VILLAGE 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 VILLAGE’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.

8.2 *Ohio Ethics Laws:* The VILLAGE 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.

- 8.3 *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 VILLAGE 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.
- 8.4 *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.
- 8.5 *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.
- 8.6 *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.
- 8.7 *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. The VILLAGE acknowledges that the Term extends beyond the Project Completion Date for purposes of reporting by the VILLAGE and monitoring by Grantor of the results of the award of Grant Funds.
- 8.8 *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.

**VILLAGE OF SILVERTON
OR AUTHORIZED REPRESENTATIVE**

By: 
 Title: Village Manager
 Date: 9/16/2016

**STATE OF OHIO
OHIO DEPART OF TRANSPORTATION**

By: _____
 Jerry Wray
 Director
 Date: _____