

ODOT AGREEMENT NO. 33243

MAINTENANCE AGREEMENT BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION AND CITY OF COLUMBUS PARKS AND RECREATION DEPARTMENT TO MAINTAIN IMPROVEMENTS MADE AS PART OF FRA-OLENTANGY TRAIL/BETHEL ROAD CONNECTOR, PID NUMBER 99743

This Agreement is made by and between the State of Ohio, acting by and through the Director of the Department of Transportation (hereinafter referred to as the “ODOT”), 1980 West Broad Street, Columbus, Ohio 43223 and City of Columbus Parks and Recreation Department, (hereinafter referred to as the “CITY”), 1111 East Broad Street, Columbus, OH 43205.

1. PURPOSE

- 1.1 Whereas, 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 Whereas, Section 5501.03(A)(3) of the Ohio Revised Code provides that the Director of Transportation may coordinate the activities of ODOT with other appropriate public authorities and enter into contracts/agreements with such authorities as necessary to carry out its duties, powers and functions.
- 1.3 Whereas, ODOT is allowing the CITY to improve the Olentangy Trail by providing a connection from Olentangy River Road west of the SR315/Bethel Road interchange and tying into the existing Olentangy Trail east of the SR315/Bethel Road interchange. Work is as shown on the plan set titled **OLENTANGY TRAIL IMPROVEMENTS BETHEL ROAD TO ANTRIM PARK (aka FRA-OLENTANGY TRAIL/BETHEL ROAD), PID Number 99743** with improvements included within the Limited Access Right of Way of SR315. Work includes, but is not limited to, a new pedestrian crossing at Ramp FA/Bethel Road with a pedestrian actuated signal; the construction of a shared use path on the Bethel Road structure over SR315 (FRA-315-0858 – SFN 2515741); the construction of a shared use path adjacent to Ramp FC; and the construction of a culvert under Ramp FC. (Hereinafter referred to as the “Improvement”)
- 1.4 Whereas, the CITY has agreed to perform all future maintenance on the Improvement for the life of the enhancements on **FRA-OLENTANGY TRAIL/BETHEL ROAD, PID Number 99743**.
- 1.5 Whereas, the CITY has provided the costs associated with the design of the Improvement, has fully cooperated with ODOT in completing the design; and has agreed to maintain the Improvement; ODOT is willing to accept the contribution under certain conditions.
- 1.6 Whereas, in accordance with Ohio Revised Code 5501.31, ODOT is willing to accept the Improvement under certain terms and conditions. Therefore, for and in consideration of the mutual covenants hereinafter stipulated to be kept performed, it is agreed by the parties as follows:

2 CONSTRUCTION

- 2.1 The CITY agrees to prepare, or cause to be prepared, at no cost to ODOT, plans and specifications for the addition of the Improvement. Such plans and specifications shall be prepared in accordance with ODOT's Construction and Materials Specifications. The CITY shall submit its plans and specifications to ODOT for approval.

3 MAINTENANCE

3.1 DEFINITIONS:

A. "Improvement Inspection" shall mean an annual inspection conducted by the City of the Improvement to determine the condition, safety and maintenance needs of the Improvement. A letter shall be provided by the CITY to ODOT summarizing their findings and action plan if necessary. In addition to an annual inspection, Improvement Inspection shall include responding to public and ODOT complaints as needed.

B. "Inspection" shall mean **the physical inspection of the bridge and the new culvert, all related traffic control devices, all pavement placed within the limited access right of way; all drainage improvements within the limited access right of way; all lighting placed within the limited access right of way – in order to determine the condition of the improvements. For the structure (FRA-315-0858 – SFN 2517541), at the request of ODOT, the City shall prepare an NBIS inventory and submit data to the Federal Highway Administration (FHWA) and load rating as deemed to determine safe load capacity.**

C. "Routine Improvement Maintenance" shall mean **all ordinary and normal care and work (including snow removal), inclusive of, but not limited to, maintenance of the shared use path within the limited access right of way including the portion of the path on the FRA-315-0858 – SFN 2517541 structure and within the infield of Ramp FC; maintenance, repair, or replacement of all safety items within the Improvement – including but not limited to – the relocated guardrail on the northwest quadrant of Bethel Road/Ramp FC (Ramp from Bethel Road to SR315NB) and the addition of the parapet on structure FRA-315-0858 – SFN 2517541, maintenance of all traffic control devices associated with the shared use path within the limited access right of way; maintenance of the new culvert under Ramp FC (including wing walls and ramp foreslopes and any pavement settlement issues Ramp FC experiences in the future due to the open cut installation of the new culvert); maintenance of all drainage improvements associated with the shared use path within the limited access right of way (including storm sewers and catch basins included as part of the project); maintenance of all lighting and associated power supply associated with the shared use path within the limited access right of way; maintenance of all landscaping within the limited access right of way; and maintenance of the Improvement, appurtenances, connections and attachment modifications as shown on the plan set for OLENTANGY TRAIL IMPROVEMENTS BETHEL ROAD TO ANTRIM PARK (aka FRA-OLENTANGY TRAIL/BETHEL ROAD), PID Number 99743.**

D. "Extraordinary Maintenance" means the act of repairing, replacing, or rehabilitating an item within the Improvement which both parties understand to be of such magnitude as to be beyond the scope of work ordinarily performed by routine maintenance and repair forces. This work shall be categorized as unexpected, emergency, or in need of immediate attention.

E. "Lighting Maintenance" means keeping and preserving adequate sign and highway lighting and operation of the Improvement. Lighting maintenance shall include, but not be limited to: spot and scheduled relamping, pole knockdown, occasional tower lowering and resetting for repair of lowering mechanism, underground circuit repairs, control center or power service replacements as needed, replacement of burned out lamps, defective photo cells, defective ballasts, broken glassware, defective luminaries, defective control centers, defective wiring, group replacement of lamps every 48 months, and washing of glassware once a year.

F. "Energy Costs" means the cost of electricity, furnished by an electrical utility company, required to provide adequate lighting and operation of the Improvement, including roadside structures and facilities within the highway right-of-way.

G. "Repairs" shall mean all work necessary to restore the Improvement to a sound state after decay, corrosion, or damage has occurred.

3.2 The CITY agrees to keep the **exit and entrance ramps to the interchange or corridor of SR315/Bethel Road open to traffic at all times while performing maintenance activities.**

- 3.3 The CITY agrees to perform all maintenance activities required by industry practices to maintain the Improvement in an attractive manner.
- 3.4 If any future ODOT maintenance/reconstruction activities associated with the bridge or roadway within the right of way of SR315 impacts the Improvement, the City agrees to perform all necessary work needed to maintain the Improvement as a result of the maintenance/reconstruction activities – including, but not limited to, any closures, restrictions, notifications, or temporary trail construction deemed necessary that may impact the Improvement.
- 3.5 If upon completion of the construction of the Improvement any of the features of the Improvement are not functioning as intended, due to not being constructed in conformity with the plans or bid documents, or due to plan errors or omissions, the City is responsible for taking any necessary corrective action to assure the Improvement functions correctly – including but not limited to any drainage issues.
- 3.6 All work requiring vehicles and workers 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 work until the proper traffic control devices have been provided.
- 3.7 The CITY, upon completion of the work, shall leave the highway clean of all rubbish, excess material, equipment and all parts of the highway disturbed by maintenance activities associated with the Improvement shall be left in an acceptable condition.

3.8 The CITY agrees to perform, at no cost to ODOT, **all Improvement Inspections, Routine Improvement Maintenance, Extraordinary Maintenance, Lighting Maintenance, Payment of Energy Costs, and repairs necessary for the sole life of the Improvement.** The CITY is responsible for any harm or damage to other parties as a result of negligent design, inspection,

construction or maintenance of the Improvement, appurtenances, connections or attachment modifications.

- 3.9 In accordance with Section 4 below, the CITY agrees that, in the event the Improvement falls into a state of disrepair, ODOT may repair the Improvement, at the expense of the CITY, or remove portion(s) of the Improvement in accordance with ODOT standards at the expense of the CITY.
- 3.10 In accordance with Section 5501.47 of the Ohio Revised Code, ODOT agrees to perform all necessary inspections of the bridge exclusive of the Improvement inspection.
- 3.11 The CITY will apply to ODOT for a permit to occupy the highway right-of-way for any feature proposed within the limited access right-of-way.

REIMBURSEMENT

- 4.1 The CITY shall perform all Maintenance Activities as listed under Section 3 for the Improvement at no cost to ODOT.
- 4.2 In the event that ODOT removes any portion of the Improvement for falling into a state of disrepair pursuant to Section 3.9, the CITY agrees to pay for the costs of the total removal and any replacement cost.

5 NEGLIGENCE, DEFAULT, AND DISPUTE RESOLUTION

- 5.1 Neglect or failure of the CITY to maintain the Improvement or 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 is 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 CITY's control. The CITY, however, shall remedy as soon as possible each cause preventing its compliance with this Agreement.
- 5.2 If notified by ODOT, in writing, that any portion of the Improvement is in disrepair, or that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the CITY shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the CITY shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty days and failure by the CITY to remedy, or to satisfactorily commence the remedy of, the default shall result in ODOT, at its discretion, terminating this Agreement.
- 5.3 The CITY, upon receiving a notice of termination from ODOT for default, shall terminate all contracts and other agreements it has entered into relating to such covered maintenance.
- 5.4 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

CITY 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.

- 5.5 In the event a dispute arises regarding payment of any charges for repair or removal of the **improvements as shown on the construction plans within the limited access right of way for the project FRA-OLENTANGY TRAIL/BETHEL ROAD, PID Number 99743** by ODOT, notification of such dispute shall be sent to the Director of the Ohio Department of Transportation and a designated representative of the CITY, in writing, within 90 days of discovery of such dispute. In such notification, the disputing party shall present such evidence as may support their position. Within a reasonable time, the Director and a designated representative of the CITY shall review the facts and circumstances surrounding the dispute for the purpose of determination. Said dispute regarding payment shall be resolved within a reasonable period of time.

6 TIME OF PERFORMANCE

- 6.1 This Agreement shall not expire unless agreed to in writing by both ODOT and the CITY. Should an interchange modification, a bridge rehabilitation or replacement project of the bridge require removal of the Improvement or portion thereof and the CITY chooses to re-construct the same Improvement or portions thereof, the cost of such a reconstruction shall be at the CITY's expense.

7 NOTICE

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

Tony Collins
Director of Parks and Recreation
City of Columbus
1111 East Broad Street
Columbus, OH 43205

District Six Deputy Director
Attention: Tracy L. Allen
ODOT, District Six
400 East William Street
Delaware, OH 43015

8 DEFAULT AND BREACH OF CONTRACT

- 8.1 Upon a termination of this Agreement by ODOT, ODOT shall conduct an inspection of the facility to determine whether the facility has been maintained in an acceptable condition. If the facility is not maintained to an acceptable degree and condition, then ODOT may take any measures necessary to maintain the facility. The CITY shall be held responsible for full restitution of all expenses incurred in maintaining the facility.

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. If, at any time, it becomes necessary, in the opinion of the Director of Transportation to order the removal, reconstruction, relocation, or repair of the facility, said removal work shall be completed wholly at the expense of the CITY, and be made as directed by the Director of Transportation.

- 9.2 This Agreement constitutes the entire Agreement between the parties regarding the project. All prior discussions and understandings between the parties are superseded by this Agreement.
- 9.3 Neither this Agreement nor any rights, duties, or obligation described herein shall be assigned by any party hereto without the prior express written consent of the other parties. Any change to the provisions of this Agreement must be made in a written amendment executed by all 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 6** 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 CITY to comply with all of the conditions and restrictions written herein.
- 9.7 The CITY shall be responsible for 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 CITY as a result of the maintenance of said facility.
- 9.8 The CITY 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 This agreement may be terminated by either party upon ninety (90) days written notice to the other party. Upon mutual written consent of the parties, this agreement can be renewed for periods of one year.
- 9.10 It is expressly understood by the Parties that all financial obligations of the State of Ohio 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 ODOT. If the Ohio General Assembly fails at any time to continue funding for maintenance and inspection projects hereunder, this Agreement is hereby terminated as of the date that the funding expires without further obligation of ODOT or THE CITY.

10 **SIGNATURES**

- 10.1 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.
- 10.2 Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or email. Each party hereto shall be entitled to rely upon a facsimile signature of any other party delivered in such a manner as if such signature were an original.

STATE OF OHIO
Department of Transportation

By: _____
Jack R. Marchbanks, Director

Date: _____

CITY OF COLUMBUS
Recreation and Parks

By: _____
Paul Rakosky, Director

Date: _____