

ORDINANCE 2015 - 121

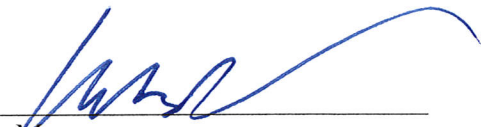
AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENT #19444 WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF CONSTRUCTING S.R. 741 ROAD IMPROVEMENTS RELATED TO THE MASTERS/360 PHARMA DEVELOPMENT

BE IT ORDAINED by the Council of the City of Mason, Ohio, five members elected thereto concurring:

Section 1. That the City Manager is hereby authorized to enter into the Agreement for the Masters/360 Pharma road improvements, as set forth in Exhibit "A" and attached hereto and incorporated herein by reference.

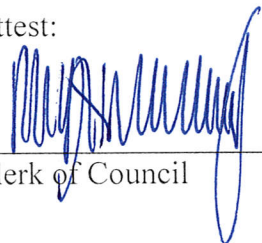
Section 2. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed this 23rd day of November, 2015.



Vice Mayor

Attest:



Clerk of Council

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

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 Mason, 6000 Mason-Montgomery Road, Mason, Ohio 45040 (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 SR-741 road improvements to support a new Masters Pharmaceutical headquarters and distribution campus; specifically, adding a northbound left turn lane and southbound right turn/deceleration lane and related intersection improvements to align with Weldon Drive (hereinafter referred to as the PROJECT). The ODOT program funds identified in this agreement are to be utilized for 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 ("JCED") program funding (SAC 4JM7) 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 **\$360,733** 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 | \$90,000 |
| ODSA Roadwork Fund 629 | \$180,000 |
| Local Fund Source(s) (up to amount) | \$90,733 |
| | |
| | |
| TOTAL | \$360,733.00 |

- 2.2 Funds provided by ODOT shall not exceed \$90,000.00 or 25 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 May 31, 2016.
- 2.5 Reimbursement to the CITY shall be submitted to:
- Eric Hansen, City Manager
City of Mason
6000 Mason-Montgomery Road
Mason, OH 45040
513-229-8510

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:

Eric Hansen, City Manager
City of Mason
6000 Mason-Montgomery Road
Mason, OH 45040
513-229-8510
ehansen@masonoh.org

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
Melissa.Taylor@dot.ohio.gov

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

07/09/2015
Agreement No.:19444
Warren County, City of Mason, Masters Pharmaceutical

Page 3 of 4
V.6

EXHIBIT "A"
PAGE 3 OF 4

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.

**MASON CITY MANAGER
OR AUTHORIZED REPRESENTATIVE**

**STATE OF OHIO
OHIO DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Title: _____

Jerry Wray
Director

Date: _____

Date: _____

07/09/2015
Agreement No.:19444
Warren County, City of Mason, Masters Pharmaceutical

Page 4 of 4
V.6

EXHIBIT A
PAGE 4 OF 4