

County Commissioners Office  
Auglaize County, Ohio  
November 16, 2010

NO. 10-441

**IN THE MATTER OF AUTHORIZING THE COUNTY AUDITOR TO DRAW WARRANTS FOR THEN AND NOW CERTIFICATE PAYMENTS.**

\*\*\*\*\*

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 16th day of November, 2010.

Commissioner Bergman moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, the practice of using "Then and Now Certificates" has been instituted by the County Auditor.

**THEREFORE, BE IT RESOLVED** that the Board of County Commissioners, Auglaize County, Ohio, the taxing authority for Auglaize County, having thirty (30) days to approve payment by resolution from receipt of "Then and Now Certificates", does hereby approve the following:

<u>Check #</u>	<u>Amount</u>	<u>Vendor</u>
345169	\$ 4,461.59	Stevens Surgical Supply, Inc.
345187	\$10,133.90	Allen County Bd. Of DD
345194	\$ 425.45	Northwestern Ohio Security Systems
345218	\$ 6,644.31	Trupointe
345265	\$ 8,552.24	Burke Petroleum

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this  
16th day of  
November, 2010

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

Don Regula      *yes*  
Don Regula

John N. Bergman      *yes*  
John N. Bergman

Douglas A. Spencer      *yes*  
Douglas A. Spencer

cc: County Auditor



Office of Housing and Community Partnerships
RLF Grant/Loan Review Report Form

Economic Development Loan Infrastructure Grant

Application No. (For OHCP Use Only)

Grantee: Auglaize County
Contact Person: Julie E. Jurosic
Telephone: (419) 222-0130
E-mail: jjurosic@wcdcorp.com
Fax: (419) 222-8211
Date of Application to Local RLF Program: 11/8/10
Date Environmental Review Submitted:

Applicant/Business: F & S Furniture, LLC
FII #: Applied for NAICS:
Name of Borrower: Randolph Francis
Title: Member
Address: 2169 Celina Road
City: St. Marys
State: OH Zip+4: 45885

PROJECT DESCRIPTION

(include a description of all activities in the project not just funded activities)

Retention Expansion New Business

New Square Footage to be built or leased:

Business acquisition (purchasing existing furniture inventory for the business currently located there), new inventory purchases

LEVEL OF ENVIRONMENTAL REVIEW

Environmental Assessment Categorical Exclusion Categorical Exclusion/Exempt Exempt

COST ESTIMATE

Attach an itemized cost estimate.

Have you verified the cost estimates and are costs reasonable? Yes No

FUNDABILITY

(include all project costs in the project not just funded activities)

Table with columns: Use, Source, Total, % of Total, Rate, Term, Collateral (LB, ME). Rows include Business Acquisition, Working Capital, Borrower equity, and a Total row.

If project includes purchase of machinery and/or equipment, list the cost of installation N/A
What percent of the equipment costs is installation %

Is this project subject to federal Labor Standards? Yes No
If "no" explain why not? Project is for inventory purchases

Personal Guarantee Yes No
Keyman Life Insurance Yes No
Other:

Total Project Amount: \$225,000

Equity Maximized: Yes No

Private Funds Maximized: Yes No
All Private Funds Committed Amount: 112500 50 %

Equity Amount: 22500 10%

Type of Gap (Complete a or b as appropriate)

a. Financing Gap: \$90,000

Verification of other private/public funding: Yes No

Amount of CDBG Request: \$90,000

Amount of CDBG Approved: \$90,000

Has the borrower agreed to terms in writing: Yes No

b. Rate of Return Gap:

Rate of Return w/ Assistance:

Rate of Return w/o Assistance:

Briefly explain how the amount, rate, and term of assistance is "appropriate" in terms of making the project financially feasible:

Because of the risky nature of a start-up business, The People's Banking Company is unwilling to commit any additional funds to the project. Additionally, Auglaize County RLF is offering a 10 year term and 4% interest rate on this loan.

**NATIONAL OBJECTIVE DETERMINATION**

Existing FTE Jobs:	0		
FTE Jobs Created:	4	Retained:	0
LMI FTE Jobs Created:	3	Retained:	0
% LMI FTE Jobs Created/Retained:			75%

LMI Verification Method:

Agency (name) West Central Development Corporation

Employer Screening

MBE

WBE

**OTHER PUBLIC BENEFITS TO BE DERIVED**

Repayments will be added to the RLF fund to be relent to future borrowers.

**ACQUISITION/RELOCATION ACTIVITIES**

Project did  or will  require the acquisition of:  
 Easements  Land  Building

Property will be acquired by:  
 Applicant  Local Government/CIC  Other \_\_\_\_\_

Date land, building, or easement was/is to be acquired:  
 \_\_\_\_\_

Prior to the acquisition, is/was the property occupied by:  
 Seller  Business/Nonprofit Tenant  Residential Tenant  Other

Relocation payments were paid/or due to:  
 Seller  Tenants  None

Date seller was advised of estimated market value of land, building, and/or easement: \_\_\_\_\_

Estimated Market Value was/will be determined by:  
 Independent Appraiser  
 Bank Appraiser  
 Person knowledgeable in Real Estate  
 \_\_\_\_\_

Sale is/will be:  Arms length transaction  Between related parties

Did/Will the project require demolition of residential structure(s)?:  
 Yes  No  
 If you answered "Yes", you must attach a 'Determining Vacant Occupiable Low- and Moderate-Income Units Worksheet. The "Determining Vacant Occupiable Low- And Moderate- Income Units" worksheet is located at:  
<http://developmentohio.gov/cms/uploadedfiles/CDD/OHCP/OHCP-Acq-RelocationForm1.pdf>

I hereby certify that the above information is true and correct to the best of my knowledge, and is based upon the required "Appropriate Analysis" and "National Objective" determination.

Don Regula  
 Signature (Chief Elected Official)

Don Regula  
 Typed Name

Commission President  
 Title

11-16-2010  
 Date

# CERTIFICATION

Have the applicant (or user), related companies, or any officers:

- a. Been convicted of a felony?  Yes  No
- b. Been convicted of or enjoined from any violation of state or federal securities law?  Yes  No
- c. Been a party to any consent order or entry with respect to an alleged state or federal securities law violation?  Yes  No
- d. Been a defendant in a civil or criminal action?  Yes  No

If you have answered yes to any of the above please attach a separate sheet as an explanation.

As an authorized agent of the Applicant, I hereby submit this Financial Assistance Application. I understand that any false statement in this record may subject the Applicant Company and Signer to criminal prosecution. I understand that additional information may be requested. I also understand that this document in no way constitutes a commitment of funds by the State of Ohio for any of its programs.

I hereby represent and certify that I have reviewed the information contained in the Financial Assistance Application, the Ohio Job Creation Tax Credit Supplemental Information and the foregoing and attached information, to the best of my knowledge and belief, is true, complete and accurately describes the proposed project for which the tax credit is being sought. I am aware of Ohio Revised Code Sections 9.66(C) and 2921.13(D)(1) which outline penalties for falsification which could result in the return of all credits/monies received and the forfeiture of all current and future economic development assistance benefits as well as a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months. I further agree to inform the Authority of any changes in the foregoing information which may occur prior to the time the applicant and the Chairman of the Authority execute a Tax Credit Agreement. Further, I hereby authorize the Ohio Department of Development to contact the Ohio Environmental Protection Agency to confirm statements contained within this application and to review applicable confidential records.

The undersigned, on behalf of the applicant, understands and acknowledges that even though the information contained in this application, or which may hereafter be communicated to the Authority, contains confidential and proprietary information, it may be subject to public disclosure during deliberations of the Authority at public meetings regarding the project, in the minutes of the Authority's public meetings, and in circumstances described in Ohio Revised Code Section 122.17(G). Further, I hereby authorize the Ohio Department of Development and the Authority to release to the public the name of our business entity, the identity of our business entity's parent, a description of the project, the location of the project, the number of jobs we are committing to create and retain, the amount of our capital investment in the project, and the business entity's contact person and office address and telephone number.

_____ <b>Company Signature</b>	Randolph Francis _____ <b>Typed Name</b>	Member _____ <b>Title</b>	_____ <b>Date</b>
<i>Don Regula</i>	Don Regula	Commission President	11-16-2010
_____ <b>Community CEO Signature</b> (if applicant)	_____ <b>Typed Name</b>	_____ <b>Title</b>	_____ <b>Date</b>
_____ <b>Other Signature</b>	Julie Jurosic _____ <b>Typed Name</b>	Project Manager _____ <b>Title</b>	_____ <b>Date</b>

**PART 3: UNDERSTANDING THE STATUTORY CHECKLIST - CATEGORICALLY EXCLUDED PROJECTS ONLY**

On **Categorically Excluded projects exclusively** (not *Categorically Excluded not Subject to 58.5, Environmental Assessment, or Environmental Impact Statement* levels of review), the regulations (24 CFR 58.34(b)(12)) allow a project to be **subsequently EXEMPT** when all applicable authorities on the Statutory Checklist require no compliance. For each area listed on the previous page, if Columns 1, 2 or 3 have been checked, they **MAY BE** moved to **subsequently EXEMPT** if and only if **COMPLIANCE** is not required.

**COMPLIANCE is not required in the following situations:**

1. The grantee has a valid coordination agreement with the applicable entity and the project meets a specific exemption in the agreement.
2. Correspondence has been made with the applicable entity and the entity has determined that no compliance is needed.
3. The preparer of the Statutory Checklist has determined that the applicable entity is not affected by the project and has made no correspondence with the entity. Documentation still must be provided to verify this decision.

**EXAMPLE: HISTORIC PROPERTIES**

Grantee has corresponded with the Ohio Historic Preservation Office (OHPO) and has received a response that "no historic properties are affected" as a conclusion to the Section 106 process. This indicates that no historic properties are present. The grantee would attach documentation and fill out the Statutory Checklist accordingly:

AREA OF STATUTORY AND REGULATORY COMPLIANCE <i>Attach compliance documentation for each area.</i>	1 Not applicable to this Project	2 Consultation Required	3 Review Required	EXEMPT?	Permits Required	Determination of Consistency, Approvals, Permits Obtained	Conditions and/or Mitigation Action Required
<b>Historic Properties</b> Cite response form OHPO			X	X			

**Note:** "No historic properties are affected" does not mean the same as a "No Adverse Affect." "No Adverse Affect" means that historic properties are present, but the project, as proposed, will not affect the historic aspects of the property. This IS a coordination and cannot be called subsequently EXEMPT.

\* If all areas of the Statutory Checklist are checked Subsequently EXEMPT, then the grantee can change the environmental level from **Categorically Excluded (CE)** to **Categorically Excluded but Subsequently Exempt (CE EX)**.

**PART 4: PREPARER AND CEO IDENTIFICATION AND CERTIFICATION**

An ENVIRONMENTAL ASSESSMENT CHECKLIST is  or; is not  additionally required.

A SECOND TIER REVIEW will  or; will not  be required on this project.

Prepared By: Julie E. Jurosic

Title: Project Manager | Date:

Certifying Officer Name: Don Regula

CO (or CEO) Signature: *Don Regula* | Date: 11-16-2010

Note: This document MUST be signed before a grantee goes to publish and required Environmental Review public notices.

**CERTIFICATION OF  
CATEGORICAL EXCLUSION PROJECT NOT SUBJECT TO § 58.5  
(BUT REQUIRED TO COMPLY WITH 24 CFR 58.6)**

The Auglaize County Board of Commissioners requests that the State of Ohio release Federal funds under Section 104 (g) of Title I of the Housing and Community Development Act of 1974, as amended; Section 288 of Title II of the Cranston Gonzales National Affordable Housing Act (NAHA), as amended; and/or Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended; to be used for the following projects:

Project Name  
(if applicable)/

<u>Activity Name</u>	<u>Location</u>	<u>Activity No.</u>	<u>Activity Amt.</u>	<u>Grant Agreement No.</u>
F&S Furniture, LLC	2169 Celina Rd., St. Marys, OH	(1) Inventory purchase	\$90,000.00	B-E-10-006-1

The Auglaize County Board of Commissioners has reviewed the aggregated scope of each of the above listed projects and has determined that each is consistent with the criteria described at 24 CFR 58.35 (b), Categorical exclusions not subject to Sec. 58.5. The projects, funded in whole or in part, will not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. There are no extraordinary circumstances or conditions that indicate that these activities could have a significant environmental effect.

The Auglaize County Board of Commissioners has documented in a written environmental review record (ERR) its determination that each project meets the conditions specified for inclusion in this category. If the project scope is changed or modified and will result in a physical impact on a structure or property, a new environmental review will be conducted for the modified project.


The Auglaize County Board of Commissioners acknowledges that it remains responsible for carrying out any applicable requirements under 24 CFR 58.6 (e.g. flood hazards, coastal barrier resources, and runway clear zones). Updates for unidentified sites will be performed and maintained in the ERR. The ERR is on file and available for the public's examination and copying, upon request, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) at the address listed below.

The environmental review was conducted by:

Julie E. Jurosic, CPA, Project Manager  
West Central Development Corporation  
915 W. Market Street, Suite C  
Lima, OH 45805

I, as certifying officer, certify the accuracy of these statements:

Don Regula, President  
Auglaize County Board of Commissioners

  
\_\_\_\_\_

Date: 11-16-2010

Submit Certification to:

Ohio Department of Development  
Office of Housing and Community Partnerships (OHCP)  
Environmental Grant Analyst  
P.O. Box 1001  
Columbus, Ohio 43216-1001

**IN THE MATTER OF AUTHORIZING THE SUBMISSION OF AN APPLICATION AND ENVIRONMENTAL REVIEW – CATEGORICALLY EXCLUDED (CE) DOCUMENTATION TO THE STATE OF OHIO, OFFICE OF HOUSING AND COMMUNITY PARTNERSHIPS AND EXECUTION OF LOAN DOCUMENTS ON BEHALF OF THE BOARD OF COUNTY COMMISSIONERS FOR ITS REVOLVING LOAN FUND.**

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The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 16th day of November, 2010.

Commissioner Bergman moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, Auglaize County has agreed to make a Revolving Loan to F & Furniture, LLC in the maximum principal amount of \$90,000.00.

**NOW, THEREFORE BE IT RESOLVED** by the Board of Commissioners of Auglaize County, Ohio does hereby approve the loan documents as presented; and,

**BE IT FURTHER RESOLVED** that the Board does authorize the President of the Board of County Commissioners to execute said loan documents; and,

**BE IT FURTHER RESOLVED** that said loan documents be hereto attached and thus become a part of this Resolution.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this  
16th day of  
November, 2010

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

Don Regula . yes  
Don Regula

John N. Bergman . yes  
John N. Bergman

Douglas A. Spencer . yes  
Douglas A. Spencer

cc: West Central Development Corporation –  
Beth Granger

**IN THE MATTER OF AUTHORIZING ANDREW B. KING, ATTORNEY, TO REPRESENT THE AUGLAIZE COUNTY REVOLVING LOAN FUND PROCEEDINGS AND COMPLY WITH ALL REGULATIONS FOR THE REVOLVING LOAN TO F & S FURNITURE, LLC.**

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The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 16th day of November, 2010.

Commissioner Bergman moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, Auglaize County has established a Revolving Loan Fund (RLF) to assist with the Economic Development growth to businesses of Auglaize County; and,

**WHEREAS**, Auglaize County has agreed to make a Revolving Loan to F & S Furniture, LLC in the maximum principal amount of \$90,000.00; and,

**WHEREAS**, once an application for economic development loan funds has been submitted certain procedures, as mandated by the Ohio Department of Development Office of Housing and Community Partnership (OHCP), must take place; and,

**WHEREAS**, said procedures include the filing of security interests, performing loan closings and any other legal issues associated with said loan; and,

**WHEREAS**, it is the recommendation by the OHCP that the loan proceedings be overseen by the legal counsel for Auglaize County or an appointed representative thereof; and,

**WHEREAS**, it is the recommendation of the Auglaize County Prosecutor that the Board of County Commissioners appoint Andrew B. King, Attorney, 212 N. Elizabeth Street, Lima, OH 45801, to represent said Auglaize County Revolving Loan.

**THEREFORE BE IT RESOLVED** that the Board of Commissioners, Auglaize County, Ohio, does hereby authorize Andrew B. King, Attorney, to represent the Auglaize County Revolving Loan Fund proceedings and comply with all state regulations for the Auglaize County Revolving Loan to F & S Furniture, LLC.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this  
16th day of  
November, 2010

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

Don Regula , yes  
Don Regula

John N. Bergman , yes  
John N. Bergman

Douglas A. Spencer , y  
Douglas A. Spencer

cc: West Central Partnership – Beth Granger



**IN THE MATTER OF AUTHORIZING THE COUNTY AUDITOR TO ISSUE A WARRANT TO VILLAGE OF NEW BREMEN FROM THEIR PERMISSIVE LICENSE PLATE TAX FUND AS RECOMMENDED BY THE COUNTY ENGINEER.**

\*\*\*\*\*

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 16th day of November, 2010.

Commissioner Bergman moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, the following letter of request was submitted to the Board of County Commissioners by Doug Reinhart, County Engineer:

The Village of New Bremen has provided to me a paid invoice for over \$ 165,000 for improvements to streets during 2010 which qualifies for Permissive License Plate Tax reimbursement. Please authorize the Auglaize County Auditor to reimburse the Village of New Bremen the amount of \$ 33,680.21 that currently exists in their Permissive License Plate Fund.

s/Douglas Reinhart  
Douglas Reinhart, P.E., P.S.  
Auglaize County Engineer

**THEREFORE, BE IT RESOLVED** that the Board of County Commissioners, respective of Engineer Reinhart's request, does hereby authorize the County Auditor to issue a warrant in the amount of \$33,680.21 made payable to the Village of New Bremen with funds to be drawn from their Permissive License Plate Tax Fund.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this  
16th day of  
November, 2010

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

Don Regula , yes  
Don Regula

John N. Bergman , yes  
John N. Bergman

Douglas A. Spencer , yes  
Douglas A. Spencer

- cc: County Engineer
- ✓ County Auditor
- ✓ Village of New Bremen

**IN THE MATTER OF AMENDING THE ANNUAL APPROPRIATION AS REQUESTED BY THE  
EMERGENCY MANAGEMENT COORDINATOR.**

\*\*\*\*\*

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 16th day of November, 2010.

Commissioner Bergman moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, under date of January 7, 2010, the Annual Appropriation for Auglaize County was accepted, having been prepared with the 2010 Annual Amended Official Certificate of Estimated Resources which was given to the Board of County Commissioners by the County Auditor; and,

**WHEREAS**, County Auditor Janet Schuler informed the Board that an amendment was made to the Annual Amended Official Certificate for the EMPG Reimbursement Fund (941); and,

**WHEREAS**, Troy Anderson, Emergency Management Coordinator, requested that the Board amend the 2010 Annual Appropriation to reflect the following increase:

**Increase 941 EMPA Fund – 941.0941.53100 (EMPG Reimbursement Out) by \$5,496.95.**

**THEREFORE BE IT RESOLVED** that the Board of County Commissioners of Auglaize County, Ohio, does hereby order the 2010 Annual Appropriation Resolution be amended to show the changes as tabulated above.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this  
16th day of  
November, 2010

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

Don Regula . ye  
Don Regula

John N. Bergman . yes  
John N. Bergman

Douglas A. Spencer . Yes  
Douglas A. Spencer

cc: ✓ County Auditor Janet Schuler  
✓ Troy Anderson - EMA

**IN THE MATTER OF AUTHORIZING BUDGET ADJUSTMENTS.**

\*\*\*\*\*

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 16th day of November, 2010.

Commissioner Bergman moved the adoption of the following:

**RESOLUTION**

WHEREAS, the Board has been requested to authorize budget adjustments as follows: and,

**Real Estate Assessment Fund:**

<b>Amount:</b>	<b>From:</b>	<b>To:</b>
\$ 20,650.00	014.0012.530604 (Contract Services)	014.0012.530400 (Equipment)

**Motor Vehicle & Gasoline Tax Fund:**

\$ 30,000.00	002.0015.536600 (Health Ins.)	002.0014.530401 (Fuel)
\$ 15,000.00	002.0014.550200 (Capital)	002.0014.530401 (Fuel)
\$ 10,000.00	002.0014.550200 (Capital)	002.0014.530301 (Parts)
\$ 3,816.93	002.0015.550100 (Contract)	002.0014.530500 (Contract Services)
\$ 1,726.08	002.0015.538500 (Compensation)	002.0014.530500 (Unemployment)

THEREFORE BE IT RESOLVED that the Board of County Commissioners of Auglaize County, Ohio, does hereby authorize the budget adjustments to show the changes as tabulated above.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this  
16th day of  
November, 2010

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

Don Regula . yes  
Don Regula

John N. Bergman . yes  
John N. Bergman

Douglas A. Spencer . yes  
Douglas A. Spencer

cc: County Auditor

**IN THE MATTER OF APPROVING A LOCAL PROGRAM ADMINISTRATOR (LPA) AGREEMENT  
NO. 23789 WITH ODOT FOR THE RESURFACING OF COUNTY ROAD 33A AS PRESENTED BY THE  
COUNTY ENGINEER'S OFFICE; AUTHORIZING THE EXECUTION OF SAID AGREEMENT.**

\*\*\*\*\*

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 16th day of November, 2010.

Commissioner Bergman moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, Auglaize County Road #33A is the major local roadway arterial between the Cities of Wapakoneta and St. Marys and was last reconstructed in 1998; since that time the roadway surface has deteriorated and construction joints are in need of repair; and,

**WHEREAS**, Douglas Reinhart, Auglaize County Engineer, has applied for federal gas tax funding through the County Engineer's Association of Ohio (CEAO). CEAO has notified the County Engineer that funding has been obtained in the amount of 80% of the estimated project cost of \$ 2,382,000 for resurfacing and joint repair of the entire 8.9 mile length of CR#33A between the two cities; and,

**WHEREAS**, the project is programmed for federal fiscal year 2015 with the earliest bid date being July of 2014. Federal funding of the Highway Trust Fund by Congress and the amount of income from the gasoline will dictate whether or not the project stays on schedule; and,

**WHEREAS**, at the request of the County Engineer, ODOT has agreed to let the County Engineering staff to be the Local Program Administrator (LPA) so the project will be designed by the Auglaize County Engineer, bid by the County Commissioners and the project administered and inspected by the County Engineer.

**THEREFORE BE IT RESOLVED**, that the Board of Auglaize County Commissioners hereby authorizes the President of the Board of Commissioners executes the LPA Agreement No. 23789 with ODOT in order to accept the anticipated federal funding and allow the County Commissioners and Engineer to administer said project; and,

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this  
16th day of  
November, 2010

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO  
Don Regula . yes  
Don Regula  
John N. Bergman . yes  
John N. Bergman  
Douglas A. Spencer . yes  
Douglas A. Spencer

cc: County Engineer Doug Reinhart

**CFDA 20.205**

## LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

**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 Auglaize County Engineer [acting by and through the Auglaize County Commissioners], hereinafter referred to as the LPA, 1014 Blackhoof Street, Wapakoneta, Ohio, 45895-0059.

### 1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (C) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 AUG CR 33A 0.00 (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

### 2. LEGAL REFERENCES

- 2.1 This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:
  - a. Section 5501.03(C) of the Ohio Revised Code;
  - b. ODOT Policy No. 25-001(P), Development Process Policy for Locally-Administered Transportation Projects;
  - c. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
  - d. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105.
- 2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

### 3. FUNDING

- 3.1 The total cost for the PROJECT is estimated to be \$2,382,000 as set forth in Attachment 1. ODOT shall provide to the LPA eighty (80) percent of the eligible costs, up to a maximum of \$2,176,160 in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall

be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities.

- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.

#### 4. PROJECT DEVELOPMENT AND DESIGN

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

- 4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication. Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: [www.dot.state.oh.us/drrc](http://www.dot.state.oh.us/drrc).)

- 4.4 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the PROJECT Design Engineer and serve as the LPA's principal representative for attending to PROJECT responsibilities, or engage the services of a pre-qualified ODOT consultant who has been chosen using a Qualification-Based Selection (QBS) process as required pursuant to Ohio Revised Code sections 153.65 through 153.71. The pre-qualified list is available on the ODOT web page at <http://www.dot.state.oh.us/CONTRACT>.)

- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization to Advertise" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.

- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

#### 5. ENVIRONMENTAL RESPONSIBILITIES

- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.

- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at <http://www.dot.state.oh.us/CONTRACT>. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.

- 5.3 ODOT shall be responsible for the review of all environmental documents and reports, and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements.
- 5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required from the Ohio EPA.
- 5.7 If the LPA chooses to utilize the CEAO task order contract for environmental services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any task order authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.

## 6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. As specified in ODOT's Real Estate Policy and Procedures Manual, Section 5202.01-II-(B), any LPA staff who perform any real estate functions shall be prequalified by the ODOT's Office of Real Estate. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work can not also perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-

consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.

- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the PROJECT real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.
- 6.8 The LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the Ohio Revised Code regarding all activities relating to Railroad-Highway projects.
- 6.9 If the LPA chooses to utilize the CEAO task order contract for right-of-way acquisition services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any acquisition authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.

## 7. ADVERTISING, SALE AND AWARD

- 7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum



of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.

- 7.4 The LPA shall incorporate ODOT's LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts, as well as appropriate subcontracts and purchase orders.
- 7.5 In accordance with Executive Order 2002-13T, the LPA shall require the contractor to be enrolled in, and in good standing with, the Drug-Free Workplace Program (DFWP) or a similar program approved by the Bureau of Workers' Compensation, and require the same of any of its subcontractors.
- 7.6 Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in force **at the time of bidding, at the time of award, and through the life of the construction contract.** For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. The "prime" contractor must perform no less than 30 percent of the total original contract price. The 30 percent prime requirement does not apply to design-build contracts.
- 7.7 In accordance with Section 153.54, et. seq. of the Ohio Revised Code, the LPA shall require that the selected contractor provide a performance and payment bond in an amount at least equal to 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify either that the contractor is not subject to a finding for recovery under R.C. 9.24, or that the contractor has taken the appropriate remedial steps required under R.C. 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <http://www.auditor.state.oh.us/WhatsNew/FFR/>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.9 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.
- 7.10 After analyzing all bids for completeness, accuracy, and responsiveness, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this agreement, if applicable.

## 8. CONSTRUCTION CONTRACT ADMINISTRATION

- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71.
- 8.2 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the

LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.

- 8.3 The Federal-aid Highway Program operates on a reimbursement basis. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/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.
- 8.4 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.
- 8.5 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the Ohio Revised Code may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.
- 8.6 Payment or reimbursement to the LPA shall be submitted to:
- Douglas Reinhart, P.E., P.S.  
Auglaize County Engineer  
1014 Blackhoof Street  
Wapakoneta, Ohio 45895-0059  
419-739-6520
- 8.7 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all federal funding commitments.
- 8.8 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and if necessary, unilaterally modify any other term of this Agreement in order to preserve its federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.
- 8.9 Any right, claim, interest, and/or right of action, whether contingent or vested, of the LPA, arising out of or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim), may be subrogated to ODOT, and ODOT shall have all

of the LPA's rights in and to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.

- 8.10 After completion of the PROJECT and in accordance with Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years, unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.

9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 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.

- 9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it had received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the project, any funds recovered from the performance and payment bond as required under section 7.8 shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

- 10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, age, or disability as that term is defined in the American with Disabilities Act. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, ancestry, age, or disability. 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.
- 10.2 The LPA agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, age, or disability. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.

- 10.3 For any project in which the Engineer's Estimate exceeds \$500,000, the LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the Ohio Revised Code.

#### WAIVER PROCESS FOR DBE GOALS

In the event the Contractor is unable to meet the DBE Goal placed on this project, a request for waiver of all or part of the goal may be made to the Ohio Department of Transportation through the LPA. The written request must indicate that a good faith effort was made to meet the goal and be sent to ODOT's Office of Contracts with a copy to the ODOT District LPA Coordinator. Central Office will review the submitted documentation and decide the issue within ten (10) business days. There will be no extension of the time for the project granted if the prime Contractor wishes to avail himself of this process. The LPA will be notified as to the decision.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. The LPA must obtain written, signed documentation from the contractor that the DBE goal has been satisfied prior to executing the contract with the contractor. The LPA, in turn, must provide such documentation to ODOT in order for ODOT to encumber the Federal/State funds.

#### 11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT shall relinquish any such protections should they exist.
- 11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.
- 11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such

patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

## 12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

- 12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are 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 LPA's control. If a default has occurred, ODOT may terminate this agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with section 12.3 of this Agreement.
- 12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA 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 LPA 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 (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 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 LPA 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.

## 13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 13.1 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.

13.2 The LPA 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 LPA's obligations made or agreed to herein.

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

Douglas Reinhart, P.E., P.S.  
Auglaize County Engineer  
1014 Blackhoof Street  
Wapakoneta, Ohio 45895-0059

If to ODOT:

Donna Slagle, LPA Coordinator  
Ohio Department of Transportation  
1001 St. Marys Avenue, P.O. Box 969  
Sidney, Ohio 45365-0969

15. GENERAL PROVISIONS

15.1 *Audit Requirements:* The LPA shall comply with the audit requirements of 49 CFR Part 18.26 (Federal Single Audit Act) for any and all projects with a total cost of \$500,000 or more.

15.2 *Record Retention:* The LPA, 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 LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final Federal voucher for reimbursement of PROJECT expenses. 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. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

15.3 *Ohio Ethics Laws:* In accordance with Executive Order 2007-01S, the LPA, by signing this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The LPA understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the State of Ohio.

15.4 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

15.5 *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 LPA 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.

- 15.6 *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.
- 15.7 *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.
- 15.8 *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.
- 15.9 *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.

LPA: **AUGLAIZE COUNTY  
COMMISSIONERS**

**STATE OF OHIO  
OHIO DEPARTMENT OF TRANSPORTATION**

By:



By:

\_\_\_\_\_  
Jolene M. Molitoris  
Director

Title: President of Auglaize County  
Board of Commissioners

Date: November 16, 2010

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

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

USES	LPA FUNDS		FHWA FUNDS		STATE FUNDS			TOTAL
	Amount	%	Amount	%	Amount	%	SAC	
PRELIMINARY DEVELOPMENT	Local	100						
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS	Local	100						
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION	Local	100						
PROJECT CONSTRUCTION COSTS	\$428,760	20	\$1,715,040	80				\$2,143,800
INSPECTION	\$47,640	20	\$190,560	80				\$238,200
TOTALS	\$476,400		\$1,905,600					\$2,382,000



**Attachment 2**

AUG CR 33A 0.00  
COUNTY-ROUTE-SECTION

89123  
PID NUMBER

23789  
AGREEMENT NUMBER

**DIRECT PAYMENT OF CONTRACTOR**

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's contractor shall be paid directly to the contractor in the prorata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this agreement, and shall indicate that the payment is to be made to the contractor. In addition, the invoice must state the contractor's name, mailing address and Federal tax ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

We, the Auglaize County Commissioners, request that all payments for the Federal share of the construction costs of this agreement performed by \_\_\_\_\_ be paid  
directly to \_\_\_\_\_  
(CONTRACTOR'S NAME)  
(CONTRACTOR'S NAME)

Contractor Name:  
OAKS Vendor ID:  
Mailing Address:

---

LPA signature

LPA Name:  
OAKS Vendor ID:  
Mailing Address:

Approved, ODOT signature

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**IN THE MATTER OF AUTHORIZING A POSITION RE-ACTIVATION TO THE TABLE OF ORGANIZATION FOR THE AUGLAIZE COUNTY DEPARTMENT OF JOB & FAMILY SERVICES.**

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The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 16th day of November, 2010.

Commissioner Bergman moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, Michael S. Morrow, Director of the Auglaize County Department of Job & Family Services informed the Board of County Commissioners that the position of Social Service Worker 2 (Position Control Number 31002.0) is to be re-activated to the Table of Organization within the Children's Services Unit of the Auglaize County Department of Job and Family Services; same to be effective immediately.

**THEREFORE, BE IT RESOLVED** that the Board of Commissioners, Auglaize County, Ohio does hereby authorize the re-activation of the classification of the Social Service Worker 2 (Position Control Number 31002.0) to the current Table of Organization within the Children's Services Unit, same being effective immediately, of the Auglaize County Department of Job & Family Services.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this  
16th day of  
November, 2010

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

Don Regula, yes  
Don Regula

John N. Bergman, yes  
John N. Bergman

Douglas A. Spencer, yes  
Douglas A. Spencer

cc: County Department of Job & Family Services –  
Michael Morrow

**IN THE MATTER OF AUTHORIZING A DEMOTION FROM SOCIAL SERVICE SUPERVISOR 1 POSITION TO SOCIAL SERVICE WORKER II IN THE CHILDREN'S SERVICES UNIT AT THE AUGLAIZE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES.**

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The Board of County Commissioners of Auglaize County, Ohio, met in regular session on the 16th of November, 2010.

Commissioner Bergman moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, Michael S. Morrow, Director of the Auglaize County Department of Job & Family Services, informed the Board that Charla Lauth of the Department's Children's Services Unit has agreed to a voluntary demotion and will assume the duties of a Social Service Worker II, being demoted from the position of Social Service Supervisor 1; and,

**WHEREAS**, said position downgrade will be effective November 17, 2010 with the hourly rate being reduced from \$18.80 to \$16.43.

**THEREFORE, BE IT RESOLVED** that the Board of County Commissioners of Auglaize County, Ohio, does hereby authorize the position change of Charla Lauth from Social Service Supervisor 1 to Social Service Worker II in the Auglaize County Department of Job and Family Services Children's Services Unit as recommended by ACDJFS Director Mike Morrow; making said upgrade effective November 17, 2010; and,

**BE IT FURTHER RESOLVED** that the hourly rate of compensation for Charla Lauth is hereby authorized by the Commissioners to be at the rate of \$16.43 per hour, also effective November 17, 2010.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this  
16th day of  
November, 2010

**BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO**

Don Regula . yes  
Don Regula

John N. Bergman . yes  
John N. Bergman

Douglas A. Spencer . yes  
Douglas A. Spencer

✓cc: Auglaize County Department  
of Job & Family Services