

**CITY OF OBERLIN**

**ORDINANCE NO. 17-43 AC CMS**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ACCEPT PY 2016 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM THE LORAIN COUNTY COMMISSIONERS AND TO SIGN A MEMORANDUM OF UNDERSTANDING RELATED TO THE USE AND RECEIPT OF THOSE FUNDS AND DECLARING AN EMERGENCY**

WHEREAS, the City of Oberlin desires to use the Lorain County Commissioners' PY 2016 Community Development Block Grant (CDBG) Funds in the amount of \$30,900 which have been allocated for the City of Oberlin's Downtown Street Lighting Replacement Project for south side of East College Street between Main Street and Eric Nord Way; and

WHEREAS, the City of Oberlin has the authority to accept financial assistance from and to enter into a memorandum of understanding with the Lorain County Commissioners.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized to accept a grant award of PY 2016 CDBG Grant Funds in the amount of \$30,900 for the Downtown Street Lighting Replacement Project for East College Street.

SECTION 2. That the City Manager is hereby authorized to execute a memorandum of understanding, attached to this ordinance as Exhibit A, with the Lorain County Commissioners for the Downtown Street Lighting Replacement Project for East College Street.

SECTION 3. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operations of a municipal department, to wit: in order to allow for the timely execution of the construction for the East College Street Downtown Street Lighting Replacement Project the release of grant funds for the Project by the Lorain County Commissioners and shall take effect immediately upon passage.

PASSED: 1<sup>st</sup> Reading: August 21, 2017 (E)

2<sup>nd</sup> Reading: \_\_\_\_\_

3<sup>rd</sup> Reading: \_\_\_\_\_

ATTEST:



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BELINDA B. ANDERSON, MMC  
CLERK OF COUNCIL



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RONNIE J. RIMBERT  
PRESIDENT OF COUNCIL

POSTED: 08/22/2017

EFFECTIVE DATE: 08/21/2017



ORIGINAL

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU), hereinafter referred to as the Memorandum, entered into on August 23<sup>rd</sup>, 2017 by and between the City of Oberlin, 85 South Main Street, Oberlin, Ohio 44074, hereinafter referred to as the "First Party," and The Lorain County Commissioners, 226 Middle Avenue, 4th Floor, Elyria, Ohio 44035, hereinafter referred to as the "Second Party," and collectively known as the "Parties" for the purpose of establishing and achieving various goals and objective relating to the project, Oberlin Downtown Street Light Replacement Project.

**WHEREAS**, the aforementioned Parties desire to enter into the herein described agreement in which they shall work together to accomplish the goals and objectives set forth;

**AND WHEREAS**, the Parties are desirous to enter an understanding, thus setting out all necessary working arrangements that both Parties agree shall be necessary to complete this project;

### **MISSION**

The aforementioned project has been established with the following intended mission in mind: Elimination of Slum and Blight in the CDBG Targeted Area of Downtown Oberlin via a Revitalization Project.

### **PURPOSE AND SCOPE**

The Parties intend for this Memorandum of Understanding to provide the cornerstone and structure for any and all possibly impending binding contract which may be related to the project.

### **OBJECTIVES**

The Parties shall endeavor to work together to develop and establish policies and procedures that will carry out the Oberlin Downtown Street Light Replacement Project; including the Removal and Replacement of all components of the underground street light system on the South Side of East College Street between State Route 58 and Eric Nord Way intended to maintain a product and/or services that meets or exceeds all business and industry standards.

### **RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES**

It is the desire and the wish of the aforementioned Parties to this MOU Agreement that this document should not and thus shall not establish nor create any form or manner of a formal agreement or indenture, but rather an agreement between the Parties to work together in such a manner that would promote a genuine atmosphere of collaboration and alliance in the support of an effective and efficient partnership and leadership meant to maintain, safeguard and sustain sound and optimal managerial, financial and administrative commitment with regards to all matters related to the project through means of the following individual services .

## **SERVICES COOPERATION**

In completing the Oberlin Downtown Street Light Replacement Project, the City of Oberlin and Lorain County Commissioners shall render and provide the following services that include, but are not limited to:

The City of Oberlin will

- a. Utilize the Oberlin Municipal Light and Power Systems, (OMLPS) to upgrade the Downtown Street Light System on the southside of East College Street between Main St and Eric Nord Way, and
- b. Utilize Force Labor to
  1. Remove all components of the underground street light system on the South Side of East College Street between State Route 58 and Eric Nord Way and
  2. Replace all components of the underground street light system on the South Side of East College Street between State Route 58 and Eric Nord Way

The Lorain County Commissioners will provide the following:

- a. In conjunction with the City of Oberlin, and its Oberlin Municipal Light and Power Systems, (OMLPS) reimbursement of the following project costs through its 2016 CDBG funds,
  1. to pay for the Materials required by the OMLPS to complete the Oberlin Downtown Street Light Replacement Project along the southside of East College Street between Route 58 (Main St) and Eric Nord Way, and
  2. to pay the Labor cost of the OMLPS to complete the Oberlin Downtown Street Light Replacement Project along the southside of East College Street between Route 58 (Main St) and Eric Nord Way, and
  3. To pay the Equipment Costs of the OMLPS reimburse the force labor costs to complete the Oberlin Downtown Street Light Replacement Project.

## **CERTIFICATIONS**

The City of Oberlin certifies, that the community

1. has the existing, qualified staff to perform the work associated with the project
2. has the administrative capacity to carry out the project in a timely manner, and
3. Has determined that it is cost effective to utilize force account labor for this purpose.

## **PROJECT COSTS**

The Lorain County Commissioners have been approved to receive PY 2016 Community Development Block Grant Funds on OCD Grant Agreement dated 10/7/2016.

Lorain County Commissioners will reimburse up to Thirty-Thousand & Nine Hundred Dollars (\$30,900) in CDBG 2016 (as certified/approved on OCD Grant Agreement dated 10/7/2016) funding specifically for Materials, Equipment and Labor for the Oberlin

Downtown Street Light Replacement Project as denoted in a1 - a3 above. Lorain County Commissioners will only reimburse the costs found to be in compliance with CDBG PY'16 and the State of Ohio Program Policy Notice OCD 16-02 (**Use of Force Account Labor in Community And Economic Development Programs** attached).

The City of Oberlin is responsible and will pay all cost above the Thirty-Thousand & Nine Hundred Dollars (\$30,900) for the Oberlin Downtown Street Light Replacement Project.

### **TIMELINE**

The above outlined scope and objective shall be contingent on the Parties obtaining the necessary funds required for the project from the Lorain County Commissioners' CDBG PY'16 funding. Responsibilities under this Memorandum of Understanding must coincide with the CDBG PY16 grant period and be completed before 12/1/17.

### **TERMS OF UNDERSTANDING**

The term of this Memorandum of Understanding shall be until the City of Oberlin completes said project but no later than 12/1/17 from the aforementioned effective date and maybe extended upon written mutual agreement of both Parties.

### **AMENDMENT OR CANCELLATION OF THIS MEMORANDUM**

This Memorandum of Understanding may be amended or modified at any time in writing by mutual consent of both parties.

In addition, the Memorandum of Understanding may be cancelled by either party with 30 days advance written notice, with the exception where cause for cancellation may include, but is not limited to, a material and significant breach of any of the provisions contained herein, when it may be cancelled upon delivery of written notice to the other party.

### **GENERAL PROVISIONS**

The Parties acknowledge and understand that they must be able to fulfill their responsibilities under this Memorandum of Understanding in accordance with the provisions of the law and regulations that govern their activities. Nothing in the Memorandum is intended to negate or otherwise render ineffective any such provisions or operating procedures. The parties assume full responsibility for their performance under the terms of this Memorandum.

If at any time either party is unable to perform their duties or responsibilities under this Memorandum of Understanding consistent with such party's statutory and regulatory mandates, the affected party shall immediately provide written notice to the other party to establish a date for resolution of the matter.

### **LIMITATION OF LIABILITY**

No rights or limitation of rights shall arise or be assumed between the Parties as a result of the terms of this Memorandum of Understanding.

### **ARBITRATION/MEDIATION DISPUTE RESOLUTION**

The Parties to this Memorandum of Understanding agree that should any dispute arise through any aspect of this relationship, including, but not limited to, any matters, disputes or claims, the parties shall confer in good faith to promptly resolve any dispute. In the event that the parties are unable to resolve the issue or dispute between them, then the matter shall be mediated and/or arbitrated in an attempt to resolve any and all issues between the parties.

The parties agree that any claim or dispute that arises from or through this agreement, the relationship or obligations contemplated or outlined within this agreement, if not resolved through mediation, shall then go to and be resolved through final and binding arbitration. Any decision reached by the Arbitrator shall be final and binding and, if required, may be entered as a judgment in any court having jurisdiction.

In the event that any court having jurisdiction should determine that any portion of this Agreement to be invalid or unenforceable, only that portion shall be deemed invalid and not effective, while the balance of this Agreement shall remain in full effect and enforceable. This Agreement shall be interpreted and governed by and in accordance with the Federal Arbitration Act 9 U.S.C. §1-16.

### **NOTICE**

Any notice or communication required or permitted under this Memorandum shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such address as one may have furnished to the other in writing.

### **GOVERNING LAW**

This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the State of Ohio.

### **SEVERABILITY CLAUSE**

In the event that any provision of this Memorandum of Understanding shall be deemed to be severable or invalid, and if any term, condition, phrase or portion of this Memorandum shall be determined to be unlawful or otherwise unenforceable, the remainder of the Memorandum shall remain in full force and effect, so long as the clause severed does not affect the intent of the parties. If a court should find that any provision of this Memorandum to be invalid or unenforceable, but that by limiting said provision it would become valid and enforceable, then said provision shall be deemed to be written, construed and enforced as so limited.

## **ASSIGNMENT**

Neither party to this Memorandum of Understanding may assign or transfer the responsibilities or agreement made herein without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.

## **ENTIRE UNDERSTANDING**

The herein contained Memorandum of Understanding constitutes the entire understanding of the Parties pertaining to all matters contemplated hereunder at this time. The Parties signing this MOU desire or intend that any implementing contract, license, or other agreement entered into between the Parties subsequent hereto shall supersede and preempt any conflicting provision of this Memorandum of Understanding whether written or oral.

## **MOU SUMMARIZATION**

***FURTHERMORE***, the Parties to this MOU have mutually acknowledged and agreed to the following:

- The Parties to this MOU shall work together in a cooperative and coordinated effort, and in such a manner and fashion to bring about the achievement and fulfillment of the goals and objectives of this project.
- It is not the intent of this MOU to restrict the Parties to this Agreement from their involvement or participation with any other public or private individuals, agencies or organizations.
- The Parties to this MOU shall mutually contribute and take part in any and all phases of the planning and development of this project, to the fullest extent possible.
- It is not the intent or purpose of this MOU to create any rights, benefits and/or trust responsibilities by or between the parties.
- The MOU shall in no way hold or obligate either Party to supply or transfer funds to maintain and/or sustain the project.
- Should there be any need or cause for the reimbursement or the contribution of any funds to or in support of the project, it shall then be controlled in accordance with Ohio governing laws, regulations and/or procedures.
- In the event that additional funds should become necessary, any such endeavor shall be outlined in a separate and mutually agreed upon written agreement by the Parties or representatives of the Parties in accordance with current governing laws and regulations, and in no way does this MOU provide such right or authority.
- The Parties to this MOU have the right to individually or jointly terminate their participation in this Agreement provided that advanced written notice is delivered to the other party.
- Upon the signing of this MOU by both Parties, this Agreement shall be in full force and effect.

**RECORDS RETENTION**

Lorain County and the City of Oberlin shall retain all records, receipts, etc. for a period of three years after the "Final Closeout" of this MOU per CFR 200.333. Lorain County shall notify the City of Oberlin in writing once this MOU has met the necessary requirements of "Final Closeout".

**AUTHORIZATION AND EXECUTION**

The signing of this Memorandum of Understanding does not constitute a formal undertaking, and as such it simply intends that the signatories shall strive to reach, to the best of their abilities, the goals and objectives stated in this MOU.

This Agreement shall be signed by City of Oberlin and The Lorain County Commissioners and shall be effective as of the date first written above.



Rob Hillard, City Manager  
City of Oberlin

8/23/2017

(Date)



Lori Kokoski, President  
The Lorain County Commissioners

8-29-17

(Date)