

ODOT Agreement No. LOR-01-2013

**AGREEMENT
BETWEEN THE STATE OF OHIO,
DEPARTMENT OF TRANSPORTATION
AND THE CITY OF AVON
TO PERFORM ADDITIONAL MOWING MAINTENANCE
OF I-90 INTERCHANGES WITHIN THE CITY OF AVON**

This agreement is made by and between the State of Ohio, acting by and through the Director of the Ohio Department of Transportation (hereinafter referred to as "ODOT"), 1980 West Broad Street, Columbus, Ohio 43223 and the City of Avon, Ohio (hereinafter referred to as the "City"), 36080 Chester Road, Avon, Ohio 44011.

1. PURPOSE

- 1.1 Sections 5501.11(A)(4) and 5501.31 of the Ohio Revised Code provide that ODOT may cooperate with municipal corporations in the establishment, construction, reconstruction, and improvement of public roads and bridges.
- 1.2 Section 5501.03(A)(3) of the Ohio Revised Code provides that the director of Transportation may coordinate the activities of the Department of Transportation with other appropriate public authorities and enter into contracts with such authorities as necessary to carry out its duties, powers and functions.
- 1.3 The CITY has determined that it is in the CITY'S interest to provide additional mowing maintenance along the CITY's I-90 interchanges.
- 1.4 The CITY is willing to provide, by way of the costs associated with additional mowing maintenance and is willing fully to cooperate with ODOT with additional mowing maintenance and ODOT is willing to accept the contribution under certain conditions.

2. SCOPE OF WORK

- 2.1 The work to be performed under this Agreement shall consist of the following:

ODOT will continue to mow the I-90 corridor as scheduled. At such time that the CITY desires (provided it is not within the starting and interim completion dates set by the current mowing contract), ODOT grants permission for the CITY to perform additional mowing maintenance at the following I-90 interchanges: Nagle Road, State Route 83, and State Route 611.

Current Mowing Contract Urban Mowing Schedule 2013

	<u>Starting Date</u>	<u>Interim Completion Date</u>
1 st Mowing	April 22	May 17
2 nd Mowing	June 10	July 1
3 rd Mowing	July 22	August 12
4 th Mowing	September 9	September 30
5 th Mowing	October 10	October 31

- 2.2 All mowing maintenance activities shall be accomplished in accordance with the Ohio Manual of Uniform Traffic Control Devices and Item 614 (Maintaining Traffic) of the Ohio Department of Transportation Construction and Material Specification.

3. **OBLIGATION OF THE CITY**

- 3.1 The CITY agrees to pay all costs to perform any additional mowing maintenance.

4. **OBLIGATIONS OF ODOT**

- 4.1 ODOT agrees to grant to the CITY a permit to use and occupy the ramps and right-of-way in and abutting I-90 CITY interchanges for purposes of CITY requested additional mowing maintenance.

5. **NOTICE**

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

City of Avon
36080 Chester Road, Avon, Ohio 44011
Attn: _____
Telephone: _____

Ohio Department of Transportation
405 W Lorain St., Oberlin, Oh 44074
Attn: Kimberly Conklin
Telephone: (440) 774-6681

6. **BREACH OF CONTRACT**

- 6.1 Neglect or failure of the CITY to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, shall be an event of default, unless such failure or misrepresentation 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 CITY's control. The CITY, however, shall remedy as soon as possible each cause preventing its

compliance with this Agreement.

- 6.2 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 CITY shall have thirty days or a time negotiated with ODOT from the date of such notification to remedy the causes preventing its compliance and curing the default situation. Expiration of the thirty days or negotiated time and failure by the CITY to remedy the default shall result in termination of this Agreement by ODOT.

7. **MAINTENANCE**

- 7.1 The CITY agrees to keep the exit and entrance ramps to the interchanges open to traffic at all times while performing any mowing maintenance activities.
- 7.2 The CITY agrees to perform all maintenance activities required by industry practices to complete the mowing maintenance activities. "Mowing maintenance activities" can include, but shall not be limited to: actual mowing, litter removal, etc.
- 7.3 ODOT agrees to grant to the CITY any necessary permits to use and occupy the ramps and right-of-way in and abutting I-90 CITY interchanges at State Route 611, State Route 83 and Nagel Road for purpose of mowing maintenance.
- 7.4 The CITY agrees to submit any additional landscaping plans to ODOT for prior approval.

8. **GENERAL PROVISIONS**

- 8.1 This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement.
- 8.2 Neither this Agreement nor any rights, duties, or obligation described herein shall be assigned by either party hereto without the prior express written consent of the other party. Any change to the provisions of this Agreement must be made in a written amendment executed by both parties.
- 8.3 This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio.
- 8.4 The District Deputy Director of District Three shall have full authority to ensure the full compliance of the provisions of this Agreement.
- 8.5 The signing of the Agreement or the doing of any work there under shall constitute an agreement by the CITY to comply with all of the conditions and restrictions of this Agreement written herein.

- 8.6 The CITY shall save harmless the State of Ohio and all of its representatives from all suits, actions or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect or on account of any wrongful act or omission on the part of the CITY as a result of the mowing maintenance activities.
- 8.7 The CITY shall comply with the Air Pollution requirements of Rule 3745-17-08 of the Ohio Administrative Code promulgated and enforced by the Ohio Environmental Protection Agency.

9. **TERMINATION**

- 9.1 Either party may terminate this agreement by giving the other party ninety (30) days written notice.

10. **SIGNATURES**

- 10.1 Any person executing this agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this agreement on such principal's behalf.

THE STATE OF OHIO
Department of Transportation

CITY OF AVON

Jerry Wray
Director

Title: _____

Date: _____

Date: _____