

**CITY OF CHEVIOT
STATE OF OHIO**

RESOLUTION NO. 23-02

TO AUTHORIZE THE SAFETY-SERVICE DIRECTOR TO ENTER INTO AN AGREEMENT WITH THE CITY OF CINCINNATI REGARDING THE HARRISON AVENUE PEDESTRIAN SAFETY IMPROVEMENTS.

WHEREAS, certain public infrastructure improvements, specifically Rectangular Rapid Flashing Beacon signage and flexible delineators, were installed at the southeastern quadrant of the intersection of Harrison Avenue and Higbee Street in the City of Cincinnati pursuant to the City of Cheviot's request in connection with the City of Cheviot's ODOT-funded Harrison Avenue Pedestrian Safety Improvement; and

WHEREAS, the City of Cheviot and City of Cincinnati have agreed that the City of Cheviot shall maintain the aforementioned improvements; and

WHEREAS, the City of Cheviot, through the Safety-Service Director, must execute certain documents related to the maintenance of the aforementioned improvements, which is attached hereto as Exhibit "A" and incorporated herein.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHEVIOT, STATE OF OHIO THAT:

Section 1. The Safety-Service Director is hereby authorized to execute the Maintenance Agreement for the Harrison Avenue Pedestrian Safety Improvements with the City of Cheviot, which is attached hereto as Exhibit "A" and incorporated herein.

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and 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 3. This resolution shall take effect immediately.

Kerry Smyth
President of Council

Date passed

Samuel D. Keller
Mayor

Date approved

Attest:

Approved as to form:

Jenny M. Eilermann
Clerk of Council

Kimberlee Erdman Rohr
Law Director

CERTIFICATE OF PUBLICATION

I, Jenny M. Eilermann, Clerk of the Council of the City of Cheviot, Ohio, hereby certify that the foregoing resolution, or a succinct summary, was published in the *Cincinnati Court Index*, a newspaper of general circulation in the City of Cheviot, Ohio, in accordance with Section 731.21 of the Ohio Revised Code, on the following dates:

- 1) _____, 2023, and
- 2) _____, 2023.

Jenny M. Eilermann
Clerk of Council

EXHIBIT A

Contract No.: _____

MAINTENANCE AGREEMENT **[Harrison Avenue Pedestrian Safety Improvements]**

THIS AGREEMENT is made by and between the City of Cincinnati, Ohio, an Ohio municipal corporation with offices located at 801 Plum Street, Cincinnati, OH 45202 (the “**City**”) and the City of Cheviot, an Ohio municipal corporation with a principal office located at 3814 Harrison, Cheviot, OH 45211 (“**Service Provider**”).

WHEREAS, The City and Service Provider constructed certain public infrastructure improvements specifically the Rectangular Rapid-Flashing Beacon signage and flexible delineators (the “**Improvements**”), located at the southeastern quadrant of the intersection of Harrison Avenue and Higbee Street in the City of Cincinnati (the “**Site**”) as shown on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Service Provider requested the City allow for the installation of the Improvements in connection with Service Provider’s ODOT funded project (PID No. 114697); and

WHEREAS, the City is agreeable to allowing the installation of the Improvements in consideration of Service Provider agreeing to maintain all the Improvements until such time as the City agrees to assume maintenance responsibilities as provided for in this Agreement; and

WHEREAS, Cheviot’s City Council on [DATE], Ordinance No. [NO], approved, authorized, and accepted the maintenance responsibilities provided for in this Agreement; and

WHEREAS, Cincinnati’s City Council on [DATE], Ordinance No. [NO], approved and authorized this Agreement.

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties mutually agree as follows:

- 1. SCOPE OF SERVICES.** Service Provider shall perform the services as outlined in Exhibit B attached hereto and made a part hereof, (the “**Services**”), and Service Provider shall be responsible for all expenses and costs associated therewith. The Services shall be performed at no cost to the City. The Services shall be performed in good and workmanlike manner in accordance with industry standards.
- 2. TERM AND TERMINATION.**
 - a. Term.** The Services of Service Provider are to commence upon execution of this Agreement by both parties hereto and shall remain in force until this Agreement is terminated as herein provided.

- b. Termination for Convenience.** The City may terminate this Agreement at any time for any reason immediately upon written notice to Service Provider.
 - c. Termination Upon Removal of the Improvements.** This Agreement shall terminate following the removal of the Improvements by Service Provider at Service Provider's sole cost and expense including repairing, cleaning, and returning the Site to its original condition.
- 3. CONTRACTING.** As the Improvements are located within the public right-of-way, or comprise a City-owned public infrastructure asset, Service Provider agrees to contract City staff or City-approved private companies licensed by the City to perform any work on or to the Improvements, unless otherwise directed and approved by the City. A list of City-approved and licensed private companies is available at the City's website. Service Provider shall ensure all necessary permits are obtained and all fees are paid for any work performed.
- 4. OWNERSHIP OF PROPERTY.** The parties acknowledge the City is the owner of the Improvements and retains all rights incident to such ownership, including but not limited to the right to make both material and nonmaterial changes to the Improvements. In the event City makes any changes to the Improvements that would result in a substantial increase in Service Provider's obligations under this Agreement, Service Provider waives any rights, claims, or defenses to such changes and shall continue to perform the Services at Service Provider's sole expense.
- 5. DEFAULT AND REMEDY.** If Service Provider defaults in the performance of its obligation to maintain the Improvements as set forth in Exhibit B, and if Service Provider fails to correct such default within thirty (30) days after receipt of written notice thereof from the City, the City may, at its sole option and within its sole discretion, choose to perform the Service or contract for the Services to be performed and bill Service Provider the full amount of the costs and expenses incurred by the City. Service Provider agrees to pay all bills and invoices relating to the Services on or prior to the due date thereof or, if no due date is stated, within 60 days of the date of the bill or invoice.
- 6. NO MODIFICATION OF THE IMPROVEMENTS OR SERVICES.** Service Provider may not modify the Improvements or Services without prior written consent of the City. The City reserves the right to require Service Provider to modify the Improvements so as to meet the City's standard specifications and requirements for the Improvements at any time but shall notify Service Provider of any such modifications.
- 7. UTILITY BILLS.** The parties do not anticipate any utility bills for the Improvements. However, in the event any utilities are needed for the Improvements, Service Provider shall pay all utilities bills for the Improvements as they become due and owing. Service Provider shall coordinate with any utility provider to ensure the utility usage is separately metered and billed. In the event any utility amount is billed to the City, the City reserves the right to either

forward the bills to Service Provider for payment or pay the bills and be reimbursed, within 30 days, by Service Provider.

- 8. INDEPENDENT CONTRACTOR.** Service Provider shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the City. Unless the City orders Service Provider to utilize City employees to provide the Services, as contemplated in Paragraph 4 above, Service Provider shall have exclusive control of and the exclusive right to control the details of the Services and work performed hereunder and all persons performing the same and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be construed as creating a partnership or joint venture between the City and Service Provider. Unless the City orders Service Provider to utilize City employees to provide the Services, as contemplated in Paragraph 4 above, no person performing any of the work or services described hereunder shall be considered an officer, agent, servant, or employee of the City, nor shall any such person be entitled to any benefits available or granted to employees of the City.
- 9. NOTICE.** All notices required under this Agreement shall be personally served or sent by U.S. mail, postage prepaid, or by certified mail, addressed to the parties as provided below, unless otherwise specified in this Agreement or the Exhibits. Either party may change its address for notice by notifying the other party in writing.

To the City:

City of Cincinnati
Department of Transportation and
Engineering
Director
City Hall, Room 450
801 Plum Street
Cincinnati, Oh 45202

To Service Provider:

City of Cheviot
Safety Service Director
City Hall
3814 Harrison Avenue
Cheviot, OH 45211

10. SERVICE PROVIDER'S INSURANCE AND INDEMNIFICATION.

- a. Workers' Compensation.** Service Provider shall secure and maintain such insurance as required by Ohio Workers' Compensation Laws. To the extent Service Provider utilizes contractors, including independent contractors, in the performance of the Services, Service Provider shall require each such contractor to maintain insurance that complies with this paragraph 10.a.
- b. General Liability Insurance.** Service Provider shall secure and maintain and cause its contractors and agents to secure and maintain such general liability insurance as will protect Service Provider from claims for bodily injury, death, or property damage which may arise from the performance of the Services under this Agreement, including any work performed by volunteers, with a combined single limit for bodily injury and property

damage liability of a minimum of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. The City shall be named as an additional insured and the policy shall contain a waiver of subrogation in favor of the City. Service Provider shall deliver to the City a certificate of insurance, in a form reasonably satisfactory to the City, evidencing such insurance. Service Provider shall notify the City in writing at least 30 days prior to Service Provider's cancellation of any insurance policy. Service Provider shall notify the City in writing within five days of notice from the insurer of insurer's intent to cancel or not renew any policy required under this Agreement. To the extent Service Provider utilizes subcontractors, including independent contractors, in the performance of the Services, Service Provider shall require each such subcontractor to maintain insurance that complies with this paragraph 10.b.

- 11. INDEMNIFICATION.** It is specifically understood and agreed that neither party to this Agreement indemnifies the other. Each party shall be responsible for its own acts and omissions and shall be liable for payment of that portion of any and all loss, claims, causes of action, proceedings, liens, demands, expenses, fines, actions, causes of action, costs, damages, and obligations, financial or otherwise, including attorney fees and legal expenses, arising from any and all acts of the said party, its employees, agents, independent contractors, subcontractor, licensees, and invitees in the performance of this Agreement that result in injury to persons or damage to property. In no event shall either party be liable to the other for consequential, special, or incidental damages whether in an action based on contract, tort (including negligence) or any other legal theory, even if the party has been advised of the possibility of such damages.
- 12. COMPLIANCE WITH LAWS, REGULATIONS, AND PROGRAMS.** Service Provider in the performance of the Services shall comply with all applicable statutes, ordinances, regulations, and rules of the federal government, the State of Ohio, the County of Hamilton, and the City of Cincinnati.
- 13. WAIVER.** This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.
- 14. LAW TO GOVERN.** This Agreement is entered into and is to be performed in the State of Ohio. The parties agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement without regard to choice of law and conflicts of law principles.
- 15. ASSIGNMENT.** This agreement may not be assigned by Service Provider without the written approval by the City.
- 16. FORUM SELECTION.** Service Provider and its successors and assigns acknowledge and agree that all state courts of record sitting in Hamilton County, Ohio, shall be the exclusive

forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment or attachment thereto, including any duty owed by Service Provider to the City in connection therewith.

17. AMENDMENT. This Agreement may be modified or amended only by a written contract duly executed by the parties hereto or their representatives.

18. ENTIRETY. This Agreement and the Exhibits attached hereto contain the entire contract between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

19. SEVERABILITY. This Agreement shall be severable, so if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates reflected below.

CITY OF CINCINNATI

By: _____
Sheryl M.M. Long City Manager

Date: _____

CITY OF CHEVIOT

By: _____
Thomas L. Braun, Safety Service Director

Date: _____

RECOMMENDED BY:

John Brazina, Director, Department of
Transportation and Engineering

APPROVED AS TO FORM:

Assistant City Solicitor

APPROVED AS TO FORM

Law Director

**NO CERTIFICATION OF FUNDS
NECESSARY**

Karen Alder
Finance Director

EXHIBIT A: SITE AND IMPROVEMENTS

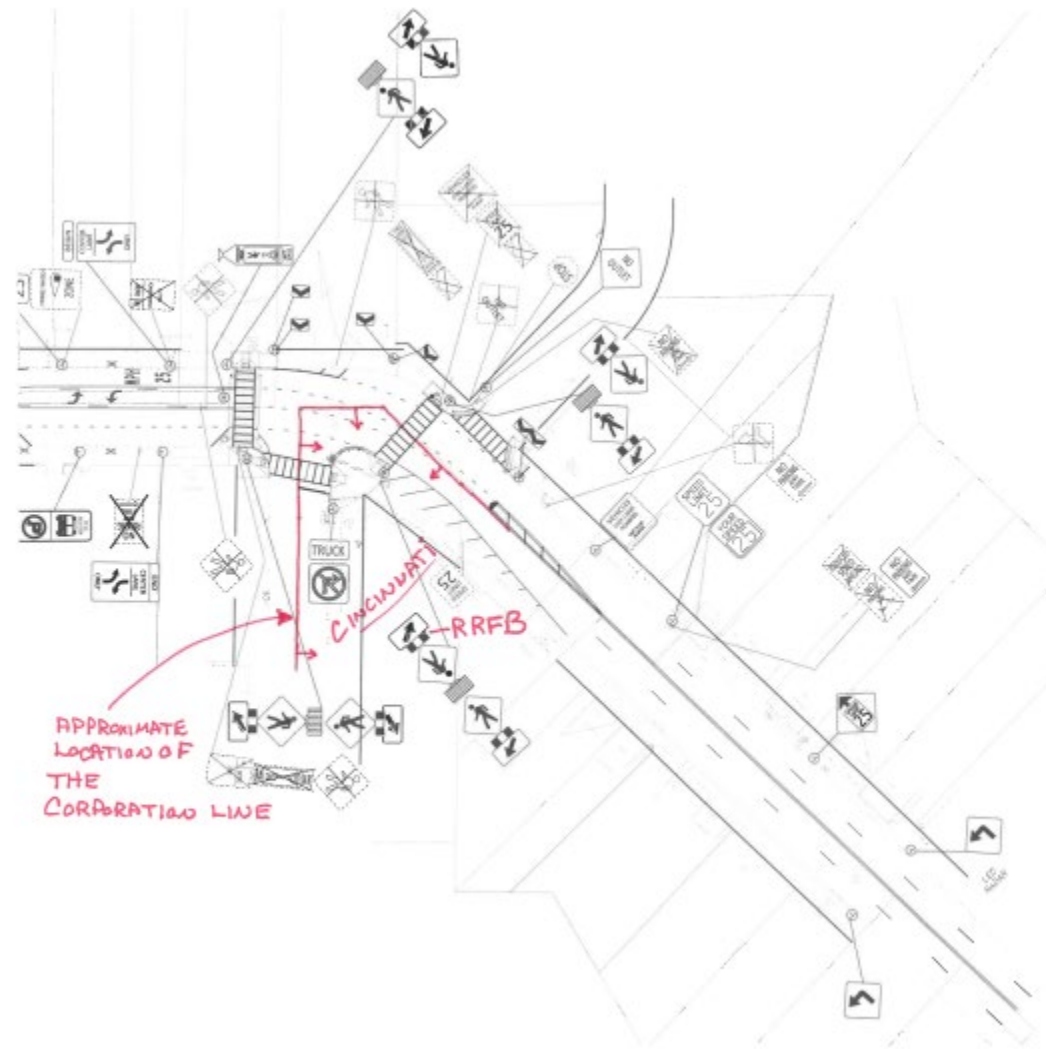


EXHIBIT B: SCOPE OF SERVICES

Service Provider agrees to provide the Services to the City, at its sole cost and expense, which includes but is not limited to the operation, cleaning, maintenance, modification, repair, and replacement of the Improvements and all appurtenances thereto, including all solar panels, foundations, electrical wiring and conduit, and any and all other items within or related to the Improvements. The Services further include, but are not limited to, the following:

- A. Service Provider further agrees to perform any and all minor and major maintenance and repairs to the Improvements, indicated and required by any City's inspection, at the Service Provider's sole cost and expense. This requirement includes, but is not limited to, the following:
 - a. Repairing, cleaning, and replacement of the Rectangular Rapid-Flashing Beacon signage; and
 - b. Repairing, cleaning, and replacement of the flexible delineators.
- B. Service Provider will obtain all permits, specifications, approvals, and authorizations as required by the City in relation to the Improvements or Services. Service Provider shall only perform work to the Improvements in conformity with approved permits, specifications, approvals, and authorizations. Service Provider shall not deviate from any approved permits, specifications, approvals, and authorizations unless it receives written confirmation from the City.