

**CAPITAL IMPROVEMENTS PROJECT
REIMBURSEMENT AGREEMENT
FOR
CENTRAL OHIO MANAGEMENT BASED APPLIED TECHNOLOGY (COMBAT)**

This Reimbursement Agreement (the "Agreement"), pursuant to Ordinance No. 0776-2007, passed the _____ day of _____, 2007, is made and entered into this _____ day of _____, 2007, by and between the City of Columbus, State of Ohio, hereinafter designated the CITY, acting by and through its Director of Public Service Department, hereinafter designated the DIRECTOR, and the Franklin County Engineer's Office, County of Franklin, State of Ohio, hereinafter designated the COUNTY; and

WHEREAS, Columbus City Council passed Ordinance No. _____ on _____ whereby the CITY agreed to reimburse the COUNTY for the construction of certain necessary improvements to the Central Ohio Management Based Applied Technology (COMBAT) project; and

WHEREAS, the COUNTY proposes to construct or to cause to be constructed the Public Infrastructure Improvements as defined in Exhibit A attached hereto and incorporated herein and further known as the "Improvements;" and

WHEREAS, the CITY recognizes the benefit that the Improvements will have on its citizens and that it is in its best interests of the CITY to enter into a Reimbursement Agreement with the COUNTY to construct such Improvements.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree, as follows:

1. DEFINITIONS:

- A.** "Contract Documents" shall mean collectively: a) this Agreement, including attachments/exhibits; and b) COUNTY resolution number 260-07 including attachments/exhibits; and c) the approved plans and specifications for the Improvements.
- B.** "Cost of Work" is defined as the total consideration paid to the COUNTY for the construction of the Improvements pursuant to Section 3 herein.
- C.** "Maximum Cost" means \$522,381.00 paid by CITY to COUNTY for the Improvements, with the total not to exceed said amount, unless and until additional amounts are appropriated by City Council, certified available by the Auditor, and an appropriate modification of this agreement is entered into by the parties.
- D.** "Improvements" means those construction improvements described in the Contract Documents, and specifically identified within Exhibit A.
- E.** "Work" means the construction of the Improvements.

2. CONTRACT TERM: This contract shall commence on _____ and shall terminate upon completion of the Work.

3. **GENERAL CONSIDERATIONS:** In consideration of the promises of the CITY set forth herein, the COUNTY agrees to construct, or cause to be constructed, the capital improvements identified in Exhibit A. In making the improvements, the COUNTY shall fully cooperate with the CITY and shall follow and comply with all reasonable requests and instructions of the CITY particularly dealing with the time, timing, and manner of doing the work and shall complete said improvements in accordance with approved plans. The COUNTY or its contractor(s) shall be responsible for complying with all other Federal State and Local laws, including but not limited to the Americans with Disabilities Act.

In communications with the COUNTY, the CITY shall respond in a timely manner, and City approvals will not be unreasonably conditioned, withheld, or delayed.

4. **PROJECT GUARANTY:** The COUNTY shall require its Contractor(s) to warrant that the Work shall be free from defects in materials and workmanship (without regard to the standard of care exercised in its performance) for a period of one (1) year after final written acceptance of the Work. The COUNTY'S contractor(s) shall at its own expense:
 - A. Correct or re-execute any of the Work that fails to conform to the requirements of the Contract Documents and appears during the prosecution of the Work.
 - B. Correct any defects in materials and workmanship of the Work (without regard to the standard of care exercised in its performance) which appear within a period of one (1) year after final written acceptance of the Work or within such longer period of time as may be set forth in the Contract Documents, and
 - C. Replace, repair, or restore any parts of the Work or any of the fixtures, equipment, or other items placed therein that are injured or damaged as a consequence of any such failure or defect, or as a consequence of corrective action taken pursuant hereto.
5. **ACCEPTANCE OF THE WORK:** Acceptance of the Improvements by the CITY shall not relieve the COUNTY of its responsibility for defects in material or workmanship as set forth in Section 5.
6. **RECORD PLAN DRAWINGS:** The COUNTY shall be responsible for requiring and compensating the design engineer for the preparation of record plan drawings for the subject project in accordance with the guidelines established by the CITY. The cost for preparation of record plan drawing preparation is reimbursable by the CITY.
7. **PERFORMANCE AND PAYMENT BOND:** The COUNTY agrees to require the subcontractor who performs the improvements to execute a contract performance and payment bond.
8. **PUBLIC USE:** The COUNTY and the CITY agree that all improvements reimbursed for under this contract shall be dedicated for public use. Upon expiration of the one (1) year guarantee period as set forth in Section 5 herein, the CITY shall accept all maintenance responsibility for the improvements constructed under this agreement.
9. **REIMBURSEMENT:** The CITY promises to reimburse the COUNTY for the CITY share of the local portion of the costs associated with the construction of the improvements described herein, up to a maximum amount of \$522,381.00 for the Improvements, with the total not to exceed \$522,381.00 as authorized by the Ordinance referenced in Section 1 of this agreement, unless and until additional amounts are appropriated by City Council, and

certified available by the Auditor, and an appropriate modification of this agreement is entered into by the parties.

The COUNTY agrees that the reimbursement of Improvements will be limited to those items specifically delineated within Exhibit "A". The CITY, through the DIRECTOR, reserves the exclusive right to consider authorizing reasonable increases and/or decreases in said items, or approving new items that are deemed reasonable to the successful completion of the project, so long as the cost therein does not exceed the Maximum Cost.

For purposes of determining the amount eligible to be reimbursed by the CITY, the COUNTY shall be required to keep complete and accurate books of account showing the Cost of Work and shall provide the following items as documentation of reimbursable project related expenditures, in the form acceptable to the Recreation and Parks Department and the City Auditor:

- A. Invoices – Three (3) copies of all construction contract invoices, including City of Columbus inspection costs, that are applicable to the construction of the project, as defined in Section 1 hereof. Invoices are required to be itemized, so as to provide a clear definition of the work; and
- B. Construction Inspection Approval – When the COUNTY's subcontractor(s) completes all of the Improvements set forth within Exhibit A, the COUNTY shall request a final inspection by the DIRECTOR. If items remain which must be completed or remedied by the COUNTY's contractor(s) as determined by the CITY, the COUNTY shall cause the work to be performed immediately upon being notified. All work must pass final inspection, and include a final accounting of the construction items utilized and have the approval of the DIRECTOR, before it will be accepted by the CITY.
- C. Payment by the City – The CITY agrees to pay 50% of the Maximum Cost to the COUNTY upon the commencement of construction, which date shall be the date indicated on the COUNTY's notice of commencement issued to its Contactor. When the CITY has made final inspection and has deemed the Improvement to have been constructed in accordance with the contract documents the CITY shall promptly pay to the COUNTY the remaining balance of the Maximum Cost, up to the actual cost of the project for all work due under the terms of this agreement.

10. **LEGAL JURISDICTION:** All claims, counterclaims, disputes and other matters in question between the CITY, its agents and employees, and the COUNTY, its contractors, subcontractors and agents arising out of or relating to this agreement or its breach will be decided in a court of competent jurisdiction within the County of Franklin, State of Ohio.

11. **EQUAL OPPORTUNITY CLAUSE:**
Contractor agrees to abide by all of the terms, conditions and requirements set forth in Columbus City Code Section 3909.01, Equal Opportunity Clause. Failure or refusal of a Contractor or Subcontractor to comply with the provisions of Article I, Title 39, may result in cancellation of this Contract. (Ordinance 2550-93.)

12. **ENTIRE AGREEMENT:** This agreement shall constitute the entire agreement between the parties and shall supersede all prior agreements, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Work.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the dates appearing below.

THE CITY OF COLUMBUS

By: _____

Title: Director of Recreation and Parks Department

Date: _____

FRANKLIN COUNTY

By: _____

Title: _____

Date _____

Fed. I.D. No.: _____

APPROVED AS TO FORM AND CORRECTNESS:

Richard C. Pfeiffer, Jr., City Attorney

AUDITOR'S CERTIFICATION:

EXHIBIT "A"

**Resolution No. 206-07 of the
Board of Franklin County Commissioners**