

**HAM-71/75-0.00/0.22, PID 75119**  
**MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF OHIO,  
DEPARTMENT OF TRANSPORTATION (ODOT), AND THE CITY OF CINCINNATI  
RECREATION COMMISSION (CRC) REGARDING THE BRENT SPENCE BRIDGE  
PROJECT IMPACT TO THE QUEENSGATE PLAYGROUND AND BALL FIELDS**  
**Agreement Number: 16588**

1. WHEREAS, the proposed roadway improvement project know as HAM-71/75-0.00/0.22, PID 75119 (PROJECT) will improve safety and traffic flow by reconstructing portions of Interstate 75 in Cincinnati, Ohio; and
2. WHEREAS, the Queensgate Playground and Ball Fields are owned by the City of Cincinnati and are under the jurisdiction of the CRC; and
3. WHEREAS, the PROJECT'S proposed limits of construction impact approximately 0.9 Acres of the Queensgate Playground and Ball Fields operated by the CRC as shown in Exhibit 1; and
4. WHEREAS, the right-of-way for the PROJECT will extend approximately 55 feet from the existing Winchell Avenue/I-75 right-of-way into the outfields of the Queensgate Ball Fields as shown on Exhibit 2; and
5. WHEREAS, the Queensgate Playground and Ball Fields, as a public recreational area, is afforded protection under Section 4(f) of the US Department of Transportation Act of 1966; and
6. WHEREAS, consultation for the PROJECT has taken place in meetings with individuals, specific groups, and the general public; and
7. WHEREAS, meetings and on-going coordination have been held with the CRC to disclose information about the project and its impacts as well as collect input; and
8. WHEREAS, ODOT has worked with the CRC to develop a conceptual mitigation plan for reconfiguration of the affected ball fields; and
9. WHEREAS, ODOT, in consultation with the FWHA, would like to apply for a *de minimis* standard to Queensgate Playground and Ball Fields for PROJECT; and
10. WHEREAS, the *de minimis* finding is based on the degree or level of impact including any avoidance, minimization and mitigation measures or enhancement measures that are included in the project to address the Section 4(f) use; and
11. WHEREAS, ODOT requests concurrence—by signature on this document—from the CRC that the PROJECT as proposed, including the mitigation described in this Memorandum of

Agreement, will not adversely affect the activities, attributes, and features that qualify the Queensgate Playground and Ball Fields for protection under Section 4(f); and

12. WHEREAS, ODOT intends to make the *de minimis* Section 4(f) finding based upon the concurrence of the CRC;
13. NOW, therefore, ODOT and the CRC agree that the PROJECT will be implemented in accordance with the following stipulations in order to mitigate the impacts to the Queensgate Playground and Ball Fields.

#### **STIPULATIONS:**

ODOT will ensure the following stipulations are carried out:


1. ODOT will acquire property from the CRC in accordance with all applicable Federal and State regulations. Compensation for land and property, excluding ball field lighting, will be via the normal ODOT property acquisition procedures. Ball field lighting will be compensated as described in the attached *Cost of Mitigation Compensation, Sections 1(d) and 2(d)*. The current PROJECT schedule anticipates acquisition of the CRC property between 2012-2013 pending approval of funding through ODOT's budgetary process.
2. ODOT, upon receipt of an acceptable plan detailing how the CRC will utilize funds for recreational purposes, will pay \$198,050 to the CRC to be applied toward the submitted plan. CRC may utilize more than the \$198,050 independently of ODOT. The financial obligation of ODOT is subject to Section 126.07 of the Ohio Revised Code and shall terminate as of June 30, 2012.
3. Limited Access Right-of-Way fencing along the park and highway boundary will be installed along the CRC property as part of ODOT's construction project. The fence will consist of 10' high chain link fencing.
4. Park Staff may remove (rescue) understory vegetation in the area to be acquired for highway purposes prior to the PROJECT sale date.
5. ODOT has given members of the public within the project's study area an opportunity to provide comments on the park impacts prior to submission of 4(f) *de minimis* documentation to the CRC. Any comments that have been received concerning impacts to the park will be provided to the CRC.
6. Subject to the Provisions in Stipulations No. 6 and No. 7 below, the CRC, with the intention of binding themselves, their successors-in-interest, and their assigns, do hereby release, hold harmless from any liability, and forever discharge the State of Ohio, the Ohio Department of Transportation, and their agents, servants, employees, and officers, personally and in any other capacity, from all claims, actions, causes of action, demands, costs, loss of services, expenses, and any and all other damages that the undersigned ever

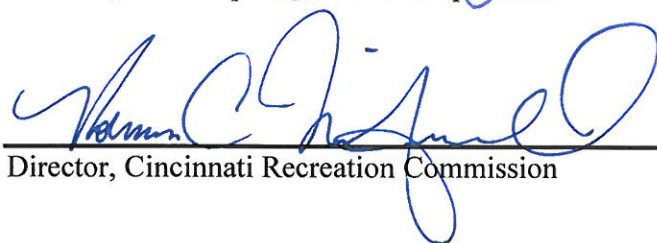
had, now have, or claim to have against the State of Ohio, the Ohio Department of Transportation, or their agents, servants, employees or officers, on account of or in any way arising out of the PROJECT's described impacts to the Queensgate Playground and Ball Fields, including any further measures to avoid, minimize or mitigate such impact.

7. ODOT will seek a *de minimis* Section 4(f) impact finding based on the terms of this Memorandum of Agreement (MOA), in accordance with Section 6009(a) of SAFETEA-LU.
8. Should any signatory to this MOA object at any time to any actions propose for the manner in which the terms of this MOA are implemented, ODOT will consult with such signatory to resolve the objection
9. Any signatory to this MOA may propose that this MOA be amended, whereupon, the parties will consultant in accordance with Section 6009(a) of SAFETEA-LU to consider such an amendment.
10. The parties agree that if plans for the PROJECT substantially change and if such changes may have a significant direct or indirect adverse impact to the Queensgate Playground and Ball Fields, other provisions of this MOA notwithstanding, the parties will reopen discussion regarding mitigation, and proceed under Section 6009(a) of SAFETEA-LU to resolve or mitigate such adverse effects.
11. If the PROJECT has not been implemented within ten (10) years of the date of the execution of this MOA, this MOA will be considered null and void, and ODOT will so notify all of the signatories. If ODOT chooses to continue with the PROJECT utilizing Federal funding then ODOT will reinitiate consultation with the signatories in accordance with Section 6009(a) of SAFETEA-LU; however, if ODOT has paid monies to the CRC pursuant to Stipulation No. 2 by June 30, 2012, the CRC shall be precluded from reinitiating consultation or requesting any further measures to avoid, minimize, or mitigate the PROJECT's described impact.

Execution of this MOA by ODOT and the CRC and implementation of this MOA's terms by ODOT evidences that ODOT has taken into account the effects of the PROJECT on the Queensgate Playground and Ball Fields.

**SIGNATORIES:**

 5/5/11  
\_\_\_\_\_  
Director, Ohio Department of Transportation Date

 4/21/11  
\_\_\_\_\_  
Director, Cincinnati Recreation Commission Date

**ATTACHMENTS:**

1. Cost of Mitigation Compensation
2. Exhibit 1: Alternative I impacts to Queensgate Playground and Ball Fields
3. Exhibit 2: Alternative I Proposed Limited Access R/W Limits
4. Exhibit 3: Queensgate Playground and Ball Fields Conceptual Mitigation Plan

## Cost of Mitigation Compensation

For purposes of establishing fair and reasonable compensation to mitigate the impacts to the Queensgate Playground and Ball fields, the following is provided:

1. In addition to the compensation of land and property needed to complete the project, to mitigate impacts to the park ODOT commits to the following additional compensation:
  - a. Compensation will be provided to the CRC based on the relocation of the two existing ball fields as shown on Exhibit 3.
  - b. Compensation will be provided to the CRC based on the relocation of the 435' of walking path within the park as shown on Exhibit 3.
  - c. Compensation will be provided to the CRC based on the loss of trees due to the relocation of ball fields and path as shown on Exhibit 3.
  - d. Compensation will be provided to the CRC based on the need to relocate field lighting due to the relocation of ball fields and path as shown on Exhibit 3.
  - e. Compensation will be provided to the CRC based on the need to prepare final mitigation plans and monitor construction of the mitigation project.

The mitigation compensation is based on the conceptual mitigation plan (Exhibit 3).

2. This section details the cost of mitigation compensation as described in Section 1(a-e).
  - a. Ball Field Compensation:
    - i. Compensation for excavation and embankment needed for relocation of two ball fields:

A Ballfield Area = 70,686 SF  
B Ballfield Area = 49,087 SF  
Combined Infield Area = 9,450 SF

Excavation:

$$[1' \text{ depth} \times (70,686 + 49,087)] / 27 = 4,436 \text{ CY} \times \$8.00/\text{CY} = \$35,488$$

Embankment (not including infield area):

$$[1' \text{ depth} \times (70,686 + 49,087 - 9,450)] / 27 = 4,086 \text{ CY} \times \$6.00/\text{CY} = \$24,516$$

Embankment (infield area):

$$(1' \text{ depth} \times 9,450 \text{ SF}) / 27 = 350 \text{ CY} \times \$17.75/\text{CY} = \$6,213$$

Embankment (infield area special preparation):

$$10 \text{ Hours} \times \$80/\text{Hour} = \$800 + \$100 \text{ Mobilization} = \$900$$

Seeding and Mulching:

$$70\% \times (70,686 + 49,087) / 9 = 9,316 \text{ SY} \times \$1.00/\text{SY} = \$9,316$$

Sodding of Infield Edge:

$$\text{Lump Sum} = \$650/\text{Field} \times 2 \text{ Fields} = \$1,300$$

ii. Compensation for new field benches and concrete pads:

$$4 \text{ benches} \times \$2,000/\text{bench} = \$8,000$$

iii. Compensation for two new vinyl coated fence backstops:

$$2 \text{ backstops} \times \$15,000 /\text{backstop} = \$30,000$$

b. Walking Path Compensation:

i. Compensation for relocation of two walking paths (270 feet of the eastern path and 165 feet of the northern path) is based on a 8' wide concrete path:

$$8' \times (270' + 165') \times \$6.75/\text{SF} = \$23,490$$

c. Tree Compensation:

i. For purposes of determining the appropriate mitigation for the impacts to the Queensgate Ball Fields, it is agreed by the Ohio Department of Transportation (ODOT) and the Cincinnati Recreation Commission that Cincinnati's legal definition of a public tree: Sec. 743-1-T. Tree. "Tree", shall be used. This definition is defined by the following:

1. Any self-supporting woody plant which has a well-defined stem with a diameter of at least four inches at four and one-half feet from the ground;
2. Any dogwood, redbud or other conspicuously flowering woody plant as designated by the director which has a well-defined stem of at least two inches diameter at four and one-half feet from the ground;

ii. Tree Compensation calculation:

1. All trees as defined in (2.c.i.1) above to be compensated based on a 1 - 2" caliper balled and burlapped or container shade tree at the rate of 1 tree for each 12" of trunk diameter at 4 ½ feet above the ground. The following trees would be impacted by the relocation of the ball fields as shown in Exhibit 3:

| <u>Species</u> | <u>dbh</u> | <u>No. of Repl. Trees</u> |
|----------------|------------|---------------------------|
| Basswood       | 17.2       | 2                         |
| Basswood       | 21.0       | 2                         |
| Basswood       | 30.9       | 3                         |
| Crab Apple     | 20.7       | 2                         |
| Crab Apple     | 21.3       | 2                         |
| Hackberry      | 23.9       | 2                         |
| Hackberry      | 17.8       | 2                         |
| Hackberry      | 23.2       | 2                         |
| Hackberry      | 19.4       | 2                         |
| Hackberry      | 18.2       | 2                         |

|           |      |          |
|-----------|------|----------|
| Hackberry | 20.4 | 2        |
| Hackberry | 16.2 | 2        |
| Hackberry | 33.8 | 3        |
| Hackberry | 24.8 | 2        |
| Hackberry | 24.8 | <u>2</u> |
|           |      | 32       |

$$32 \text{ trees} \times \$100/\text{tree} = \$3,200$$

2. All trees as defined in (2.c.i.2) above to be compensated based on a 1" caliper container understory tree. No trees in this category would be impacted by the relocation of the ball fields as shown in Exhibit 3.

d. Lighting Compensation:

- i. Compensation for relocation of six light towers includes new poles, new wiring, and reuse of existing ballasts and light:

$$6 \text{ towers} \times \$6,000/\text{tower} = \$36,000$$

e. Design and Construction Engineering Compensation:

- i. Design costs will be compensated based on 8% of the cost of compensation of items listed in Section 1.(b-e).

$$0.08 \times \$178,423 = \$14,274$$

- ii. Construction costs will be compensated based on 3% of the cost of compensation of items listed in Section 1.(b-e).




$$0.03 \times \$178,423 = \$5,353$$

- f. Total mitigation compensation to be provided in addition to land and property acquisition is \$198,050.

*ALTERNATIVE I IMPACTS TO QUEENSGATE BALLFIELDS  
- Approximately 0.9 acres needed for Proposed  
Preliminary R/W*



**LEGEND**

-  Existing R/W
-  Proposed Construction Limits
-  Preliminary Engineering R/W



**QUEENSGATE PLAYGROUND AND  
BALLFIELDS MITIGATION PLAN**





U.S. Department of Transportation  
Federal Highway Administration



### QUEENSGATE PLAYGROUND AND BALLFIELDS MITIGATION PLAN

EXHIBIT

