

COOPERATIVE AGREEMENT
between
COUNTY OF SUMMIT, OHIO
and
THE CITY OF GREEN, OHIO,
CONCERNING
CHRISTMAN ROAD BRIDGE REPLACEMENT

THIS COOPERATIVE AGREEMENT ("Agreement") is made as of the date of signature by the Summit County Executive, below, by and between the County of Summit, Ohio (the "County"), an Ohio charter county with its principal place of business located at 175 S. Main Street, Akron, Ohio 44308, acting for the Summit County Engineer, by the Summit County Executive, and the City of Green, an Ohio municipal corporation with its principal place of business at 1755 Town Park Blvd. Green, OH 44685.

WITNESSETH:

WHEREAS, Christman Road is County Highway 239 and extends through the City of Green and crosses a portion of Nimisila Reservoir; and

WHEREAS, the bridge that carries Christman Road over Nimisila Reservoir is owned by Summit County and maintained by the Summit County Engineer; and

WHEREAS, the County has secured federal Local Bridge Replacement funds in the amount of \$972,000.00 for the replacement of the bridge (the "Project") from the County Engineers Association of Ohio; and

WHEREAS, the City of Green has requested permission to add a widened walkway on the structure to accommodate a future multi-use path; and

WHEREAS, the Project is scheduled to be awarded between July 1, 2022 and June 30, 2023; and

WHEREAS, this Agreement was authorized by County Council by the adoption of County Council Resolution No. 20__ - _____; and

WHEREAS, this Agreement was authorized by the City of Green by the adoption of **Resolution No.** _____; and

WHEREAS, it is necessary for the parties to execute this Cooperative Agreement to set forth the rights and duties of the parties concerning the design and construction of the Project.

NOW, THEREFORE, in consideration of the covenants and promises set forth below, the parties agree as follows:

1. **Scope of Work of the Project and Responsibilities of the County.** The County shall undertake the Project pursuant to the Scope of Work set forth below, and shall be responsible for completion of the design and construction of the Project.

a. **Scope of Work** –The Scope of Work of the Project shall be the replacement of the Christman Road Bridge (SUM-M0239-1.04 SFN 7739109) over Nimisila Reservoir including the construction of an estimated 12 foot wide shoulder on the west side of the replacement bridge to be used as a multi-use path by pedestrians, cyclists, anglers, and other uses permitted by the City. The new bridge shall provide for 2-eleven feet wide lanes plus 2-five feet wide shoulders on each side of the bridge for vehicular traffic and the above noted 12-foot wide shoulder on the west side of the bridge. A concrete barrier shall separate the vehicular shoulder from the 12-foot wide shoulder and railing or guardrail shall be provided on both outside edges of the new structure.

b. **County Responsibilities.** The County shall administer the Project, which shall include (i) selecting, hiring and supervising an engineering design consultant to prepare detailed drawings of the Project, including the necessary plan sheets, specifications and quantities to be used in a construction bid packet (ii) reviewing and approving the Project design, (iii) advertising for bid, awarding and executing a construction contract for the Project with the lowest responsive and responsible construction contractor, (iv) supervising and inspecting the construction and testing phases of the Project, and (v) reviewing and approving any change orders that may arise. The procurement of the engineering design consultant and the construction contractor shall be done pursuant to the Codified Ordinances of the County of Summit and the Project shall be constructed in compliance with the County’s standards.

The County shall be responsible for directly paying the engineering design consultant all expenses for the design of the Project, including any “If Authorized” expenses. The County shall be responsible for 50% of all costs related to the design of the Project, including, but not limited to the costs of the engineering design consultant. As noted below the City of Green will also be responsible for 50% of the design costs.

The County has secured federal Local Bridge Replacement funds in the amount of \$972,000.00 for the replacement of the bridge from the County Engineers Association of Ohio which are restricted to the construction phase and the construction inspection and testing phases of the project and will be utilized for that purpose on this project. The federal grant requires a 20% matching share from the local agencies. The County will pay one

half of the required matching share. All costs above the allocated federal funds plus matching local share shall be shared equally between the City and the County. The County shall notify the City of any cost over runs as soon as they appear, and the County shall invoice the City for the City portion of any cost overruns within 30 days.

The County may utilize its motor vehicle gas tax funds to pay for design and construction of the Project.

Copies of all invoices and progress reports will be forwarded to the City of Green for their files.

Green Responsibilities. The City of Green will be responsible for 50% of the design costs including any environmental documentation required by ODOT. Once the County has successfully negotiated the design fee with the selected consultant, the City of Green will deposit 50% of the design fee, including 50% of any "If Authorized" items with the County to be utilized in paying the selected design consultant.

The City of Green will review all submittals provided by the County and provide any comments to the County Project Manager.

The City of Green will be responsible for one half of all Local matching funds as required by the terms of the federal grant obtained by the County for the construction phase and the construction inspection and testing phases of the project. Based on the Engineer's stamped and sealed estimate, as furnished to the Ohio Department of Transportation, the City of Green shall deposit their portion of the Local share plus 50% of the amount above the available federal grant with the County within 30 days of receipt of the County prepared invoice.

The City of Green shall pay one half of the required matching share. All costs above the allocated federal funds plus matching local share shall be shared equally between the City and the County.

All cost overruns shall be shared equally between the City and the County. The County shall notify the City of any cost overruns as soon as they appear. The County shall invoice the City for the City portion of any cost overruns within 30 days of notification and the City shall pay for their portion of the cost overruns within 30 days of receiving notification.

2. **Maintenance and Repair Responsibilities and Cost.** The County and The City of Green shall share the maintenance and repair responsibilities and cost of the bridge structure, roadway and 12-foot wide multi-use path as set forth below.

- a. **County Responsibilities.** The County shall maintain and repair the bridge structure, vehicular roadway surface and the barrier separating the roadway and multi-use path. The routine maintenance and repairs performed and paid for by the County will be in a manner consistent with other county owned bridges except as noted below.
- b. **City of Green Responsibilities.** The City of Green shall be responsible for snow removal of the entire bridge surface which includes the vehicular roadway, paved shoulders and multi-use path. The City of Green shall be responsible for all maintenance associated with the paved surface of the 12-foot wide multi-use path and any associated pedestrian railing along the edge of the multi-use path. The City of Green shall notify the Summit County Engineer before initiating any routine maintenance or repair of the 12 feet multi-use path.
- c. **Cost.** (i) The County and City of Green may enter into an agreement to share the cost related to the rehabilitation and repairs of the bridge structure, roadway surface and multi-use path. (ii) The City of Green shall be responsible for all maintenance and repair cost associated the paved surface of the 12-foot wide multi-use path. (iii) The City of Green shall pay all cost associated with snow removal. (iv) The City of Green shall be responsible for a portion of cost related to major maintenance and rehabilitation of the bridge structure and the design thereof. The portion to be paid by the City of Green shall be one-half of the cost or the local share, if third-party funding is obtained for such a project, unless otherwise mutually agreed upon by the City of Green and Summit County.

3. Dispute Resolution

In the event a dispute arises regarding this Cooperative Agreement, notification of such dispute shall be sent to all other parties to this Agreement within 30 days of discovery of such dispute.

In such notification, the disputing party shall present such evidence as may support their position. Within a reasonable time, the representatives for each party shall review the facts and circumstances surrounding the dispute for the purpose of resolution. The parties will use their best efforts to resolve said dispute within a reasonable period of time. If the dispute cannot be resolved, the parties agree to utilize a private mediator to assist in resolving the dispute, with each party paying one-half of the cost of such mediator. If mediation is unsuccessful, the parties may resort to their legal remedies.

4. Inspections

The County shall be responsible for the inspections of all work performed during construction of the Project, subject to the cost allocation stated in paragraph 1b.

5. Term

This Agreement becomes effective upon signature by the parties, and will expire upon completion and acceptance of the Project including the payment of the final invoice for construction, except that Section 2 entitled “Maintenance and Repair Responsibilities and Cost” shall continue in force after completion of the Project.

6. Miscellaneous Provisions

- a. **Relationship of Parties.** The parties agree that at no time shall the relationship between the parties under this Cooperative Agreement be construed, held out or considered a joint venture or principal-agent.
- b. **Non-Discrimination.** The parties agree that in the hiring of employees for the performance of their duties under this Cooperative Agreement, the parties or their subcontractors, or any person acting on the behalf of the parties or their subcontractors, shall not discriminate by reason of race, creed, sex, disability, military status as defined in section 4112.01 of the Ohio Revised Code, color, gender identity as defined in Section 101.02(f) in the Codified Ordinances of the County of Summit and sexual orientation as defined in Section 101.02(r) in the Codified Ordinances of the County of Summit against any citizen of the State of Ohio in the employment of labor or workers who are qualified and available to perform the work to which the employment relates.

The parties certify that they do not maintain and they will not permit their employees from performing services at any segregated facilities. The parties agree to comply with all applicable federal, state and local laws, orders, rules, and regulations, as amended, regarding discrimination.

- c. **Equal Opportunity Employer.** The parties expressly represent that they are Equal Employment Opportunity employers as defined in and are in compliance with all Equal Employment Opportunity statutes, rules, regulations, and executive orders and amendments.
- d. **Integration.** This Cooperative Agreement represents the entire and integrated agreement between the parties. This Cooperative Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Cooperative Agreement.
- e. **Amendment and Waiver.** This Cooperative Agreement may not be amended, supplemented, or waived except by a writing signed by the parties. The waiver of any particular right or claim does not constitute a waiver of any other right or claim. This Cooperative Agreement may be

amended to achieve additional goals of the parties with the written consent of the parties.

- f. **Assignment.** No party shall assign its rights or delegate its duties under this Cooperative Agreement without the prior written consent of the other parties. Subject to such consent, this Cooperative Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns.
- g. **Capacity to Execute.** Each party hereby certifies that all actions necessary to execute this Cooperative Agreement were taken and that the person executing this Cooperative Agreement is authorized to do so and has the power to bind their respective party to the terms and conditions contained herein.
- h. **Review by Legal Counsel.** Each party has had the opportunity to review this Cooperative Agreement with the assistance of legal counsel. Accordingly, the parties agree that the rule of construction that any ambiguity in this Cooperative Agreement is to be construed against the drafting party is not applicable.
- i. **No Authority to Bind.** No party has the power or authority to bind the other party to contracts or other obligations, except as provided herein.
- j. **Severability.** If any provision of this Cooperative Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Cooperative Agreement shall continue in full force and effect.
- k. **Force Majeure.** No party shall be considered in default in the performance of any obligation hereunder, except the obligation to make payment, to the extent that the performance of such obligation is prevented or delayed by fire, flood, explosion, strike, war, insurrection, embargo, government requirement, civil or military authority, act of God, or any other event, occurrence or condition which is not caused, in whole or in part, by that party, and which is beyond the reasonable control of that party. The parties shall take all reasonable action to minimize the effects of any such event, occurrence or condition.
- l. **Reservation of Rights.** A delay or failure in enforcing any right or remedy afforded hereunder or by law shall not prejudice or operate to waive that right or remedy or any other right or remedy, including any remedy for a future breach of this Cooperative Agreement, whether of a like or different character.
- m. **Notices.** Every notice and demand required under the terms of this Cooperative Agreement shall be in writing and must be sent by certified mail, return receipt requested, or by other means of delivery requiring a

signed receipt, to the other party's address as shown below. All notices are effective upon receipt. A party may change its address by giving written notice to the other party in accordance with this Section.

Notices to the County

County of Summit
County Executive - Department of Law
175 S. Main Street
Akron, Ohio 44308

With additional notice to:

Summit County Engineer
538 East South Street
Akron, Ohio 44311

Notices to Green:

City of Green
Attn: Gerard Neugebauer, Mayor
PO Box 278
Green, OH 44232

With additional notice to:

City of Green
Attn: Paul Pickett, City Engineer
PO Box 278
Green, OH 44232

- n. **Compliance.** Each party agrees to comply with all applicable federal, state and local laws, orders, rules, and regulations.
- o. **Ethics Compliance.** Each party agrees to comply with Ohio Ethics Laws as listed in the Chapters 102 and 2921 of the Ohio Revised Code. By signing this Cooperative Agreement, each party certifies that it is unaware of any violations of these provisions and that the undersigned believes their respective entity is in compliance with these provisions.
- p. **Governing Law.** This Cooperative Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts of choice of laws.
- q. **Forum.** Any litigation arising under this Cooperative Agreement must be litigated in the County of Summit Court of Common Pleas, and each party submits itself to the jurisdiction and venue of those courts.

(End of text. Execution on following page.)

Intending to be legally bound, the parties have signed this Cooperative Agreement effective as of the date of execution by the Summit County Executive.

COUNTY OF SUMMIT, OHIO

By: Ilene Shapiro, Executive

Date: _____

Alan Brubaker, Summit County Engineer

APPROVED AS TO FORM:

Marvin D. Evans, Assistant Prosecutor
For Summit County Prosecutor

APPROVED AS TO FORM:

Deborah S. Matz
Director, Department of Law

CITY OF GREEN, OHIO

Gerard Neugebauer, Mayor

Date: _____

APPROVED AS TO FORM:

Lisa Carey Dean, Director of Law