

21-130

EXHIBIT  
A

COOPERATIVE AGREEMENT  
between  
COUNTY OF SUMMIT, OHIO  
and  
VILLAGE OF PENINSULA, OHIO  
CONCERNING  
AKRON PENINSULA ROAD RELOCATION

**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 Village of Peninsula (hereinafter referred to as “Peninsula”) with its principal place of business located at 1582 Main Street, Peninsula, Ohio 44264, acting by and through the Mayor of Peninsula.

**WITNESSETH:**

**WHEREAS**, Akron Peninsula Road (a.k.a. County Highway 10) extends from the City of Cuyahoga Falls and into the Village of Peninsula; and

**WHEREAS**, a segment of Akron Peninsula Road located approximately 0.37 miles north of the intersection of Akron Peninsula Road and Truxell Road has been structurally compromised by erosion from the Cuyahoga River, and the roadway will continue to deteriorate if not relocated; and

**WHEREAS**, the Village of Peninsula has secured state funds in the amount of \$1,000,000.00 for the relocation of a portion of Akron Peninsula Road in the vicinity of the Cuyahoga River’s erosion of the riverbank, for the removal of concrete debris that has been dumped along the river’s edge in the vicinity of the relocated highway, and, if funding is available, for the stabilization of the river bank by the placement of an articulated concrete block revetment system or other similar system (the “Project”) from the Ohio Public Works Commission (OPWC); and

**WHEREAS**, approximately 0.30 miles of Akron Peninsula Road in Peninsula will be relocated away from the river; and,

**WHEREAS**, the Project will positively impact traffic in the community by allowing the road to be reopened to traffic and,

**WHEREAS**, the Project is targeted to be funded after July 1, 2021; 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 Village of Peninsula 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, excepted as noted below.

a. **Scope of Work** –The Scope of Work of the Project shall be the relocation/reconstruction of a portion of Akron Peninsula Road in the vicinity of the Cuyahoga River’s erosion of the riverbank located approximately 0.37 miles north of the intersection of Akron Peninsula Road and Truxell Road. Two 11-foot wide lanes with 3-foot wide shoulders on each side of the road matching the existing pavement widths will be constructed, including the placement of pavement markings, concrete debris that has been dumped along the river’s edge and the concrete debris that has fallen into the river in the vicinity of the erosion and relocated highway will be removed, and, if funding allows, the river bank will be stabilized by the placement of an articulated concrete block revetment system or other similar system.

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, utilizing the herein noted OPWC grant and the required matching funds from the County General Fund and American

Rescue Plan 2021 set aside funds for counties with significant Federal land. The County shall be responsible for paying the construction contractor all expenses utilizing the herein noted OPWC grant and the required matching funds from the County General Fund and the America Rescue Plan 2021 set aside funds for counties with significant Federal land. The County shall be responsible for the design of the Project, including the number of lanes, the width of the lanes and shoulders, the size and shape of the ditches, the location of any required drainage devices and the composition and thickness of all paving materials. The County Engineer shall be reimbursed for administration of the project and inspections from the funding sources noted above based on the County Engineer's standard billing rates for such work.

- c. **Peninsula Responsibilities.** The Village of Peninsula has secured an Ohio Public Works grant in the amount of \$1,000,000.00 to be used for the design, construction, inspection, testing and administration phases of the project and will be utilized for that purpose on this project. The grant requires a 10% matching component which will be provided from the Summit County General Fund and American Rescue Plan 2021 set aside funds for counties with significant Federal land.

Peninsula will continue to work with Cuyahoga Valley National Park and Conservancy for Cuyahoga Valley National Park in the event the Project needs right-of-way from the adjacent land.

Any items of work not necessary for the relocation of the roadway or required for the stabilization of the stream bank or required for the removal of concrete debris located along the riverbank and within the river that are requested and authorized by the Village, shall be paid for by Peninsula.

If at the completion of the project, if there are any unspent funds from the above noted grant, the funds shall be released to the Ohio Public Works Commission.

Peninsula will review all submittals provided by the County and provide any comments to the County Project Manager.

Peninsula retains road ownership and remains responsible for all future maintenance of Akron-Peninsula Road at this location upon completion of the Project.

## **2. 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.

### 3. Inspections

The County shall be responsible for the inspections of all work performed during construction of the Project.

### 4. 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.

### 5. 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 Peninsula:**

Village of Peninsula  
Attn: Honorable Daniel Schneider Mayor  
1582 Main Street  
Peninsula, OH 44264

With additional notice to:

Bradric T. Bryan  
Goodwin & Bryan, LLP  
22050 Mastick Road  
Fairview Park, Ohio 44126

- 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

**VILLAGE OF PENINSULA, OHIO**

\_\_\_\_\_  
Daniel Schneider, Mayor, Village of Peninsula

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Bradric T. Bryan, Peninsula Legal Representative