

18-207
EXHIBIT A

COOPERATIVE AGREEMENT
between
COUNTY OF SUMMIT, OHIO,
BATH TOWNSHIP, OHIO,
and
EMBASSY PARK LANDOWNERS' ASSOCIATION
CONCERNING
CLEVELAND MASSILLON ROAD AT GHENT ROAD
INTERSECTION RECONSTRUCTION

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, Bath Township ("Bath"), an Ohio township with its principal place of business at 3864 W. Bath Road, Akron, Ohio 44333, and the Embassy Park Landowners' Association ("Association"), a not-for-profit landowners' association, with its principal place of business located at 4000 Embassy Parkway, Suite 400, Akron, Ohio 44333.

WITNESSETH:

WHEREAS, the County intends to reconstruct the intersection of Cleveland Massillon Road at Ghent Road located in Bath Township, primarily through the reconstruction/replacement of the traffic signal at the intersection and the addition of a separate northbound right turn lane from Cleveland Massillon Road onto eastbound Ghent Road (the "Project"); and

WHEREAS, the Association has requested the County to expedite the Project in order to provide relief to traffic congestion impacting its members respective properties, and to provide relief from additional traffic congestion anticipated as a result of additional development of its members' properties; and

WHEREAS, the Association desires to provide financial assistance in the amount of \$200,000 ("Association Contribution") to the County in order to ensure completion of the Project; and

WHEREAS, Bath desires to provide financial assistance in the amount of \$100,000 ("Bath Contribution") to the County in order to ensure completion of the Project, which will positively impact traffic congestion and enhance additional development within Bath; and

WHEREAS, the County will undertake and be responsible for the Project, including the design and construction of the Project; and

WHEREAS, this Agreement was authorized by County Council by the adoption of **County Council Resolution No. 2018 - _____**; 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 – Relocate the intersection, add a northbound right turn lane, reconstruct or replace the traffic signal.** The Scope of Work of the Project shall be the relocation of the intersection, addition of a northbound right turn lane, reconstruction or replacement of the traffic signal at the intersection. A conceptual depiction of the Project is attached hereto as Exhibit A, and incorporated herein by reference.
 - 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 and the construction contractor for all expenses for the actual cost of the Project, including any necessary change orders. The County shall be responsible for all costs of the construction of the Project, including any necessary change orders, less the Association Contribution and Bath Contribution (collectively the “Community Contributions”), as set forth below. The County may utilize its motor vehicle gas tax funds to pay for design and construction of the Project, or may apply for grant funding or other types of competitive funding used for road design and construction projects of this type. In the event the County applies for such competitive funding, the other parties to this Agreement agree to support

the County's application for funding.

2. **Community Contributions by Association and Bath.** Within thirty (30) days of the execution of this Agreement, the Association and Bath shall each deposit with the County the following sums as their respective portion of the Community Contributions to be used to pay in part the costs of the construction of the Project:

Association: \$200,000.00

Bath: \$100,000.00

Upon receipt of the Community Contributions, the County shall hold the same in escrow until commencement of the design of the Project. Upon commencement of design, the County will first utilize the Community Contributions to pay for the cost of design of the Project, and all Community Contribution funds remaining after the completion of the design of the Project will then first be applied to the construction of the Project, with the County being responsible for any costs of the construction of the Project in excess of the Community Contributions. Upon being invoiced for costs related to the design and construction of the Project, County will draw a pro-rata portion of said cost from each of the Community Contributions to pay the same. Upon exhaustion of the Community Contributions, the County shall bear all costs necessary for completion of the Project.

3. **Right of Way Donations**

Bath agrees to execute all necessary documents to convey to the County certain real property to be used as right-of-way for the construction of the Project, in accordance with the dedication plat prepared by Walter Schostak, P.S., and attached hereto as Exhibit B.

4. **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 determination. The parties will make their best effort to resolve aid dispute within a reasonable period of time. If the dispute cannot be resolved, the parties may resort to their legal remedies.

5. Inspections

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

6. 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.

7. 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 the Association

Embassy Park Landowners' Association
4000 Embassy Parkway, Suite 400
Akron, Ohio 44333

Notices to Bath:

Bath Township
Attn: Township Administrator
3864 W. Bath Road
Akron, Ohio 44333

- 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

EMBASSY PARK LANDOWNERS' ASSOCIATION

By: _____

Its: _____

Date: _____

BATH TOWNSHIP, OHIO

Becky Corbett, President
Board of Township Trustees

Date: _____

APPROVED AS TO FORM:

Director of Law / Summit County Prosecutor