

CEAO-LPA BRIDGE LOAD RATING PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the Summit County Engineer, 538 E. South Street, Akron, Ohio 44311-1843, hereinafter referred to as the LPA.

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies pursuant to Title 23 section 505 of the United States Code. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03(A)(3) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities as necessary to carry out its duties, powers and functions, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The Special Hauling Vehicles ("SHV") and Emergency Vehicles ("EV") Bridge Load Rating Project ("PROJECT") as detailed in Exhibit A attached hereto and incorporated herein, has been selected for funding, having received FHWA approved authorization.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

2. LEGAL REFERENCES AND COMPLIANCE

- 2.1 This Agreement is authorized and/or governed by the following statutes and policies which are incorporated by reference in their entirety:
 - A. 2 CFR Part 200 (OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards);
 - B. Federal Funding Accountability and Transparency Act (FFATA) and
 - C. Ohio Bridge Design Manual, Section 900 "Bridge Load Rating"
- 2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidance. This obligation is in addition to compliance with any law, regulation or executive order specifically referenced in this Agreement.

3. FUNDING

- 3.1 The total cost for the PROJECT is estimated to be \$ 7,030.00. ODOT shall provide to the LPA 50% percent of the eligible costs, up to a maximum of \$ 3,515.00 in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager.
- 3.2 This Agreement operates on a reimbursement basis only. The costs must first be incurred by the LPA. Costs claimed for reimbursement are to be true costs incurred in executing the PROJECT

and are to be eligible, allowable allocable, reasonable, necessary, and consistent. Final determination of cost eligibility shall rest with ODOT.

- 3.3 Invoices for reimbursement may be submitted on a quarterly basis, unless other arrangements have been agreed upon by the parties. All invoices must include detailed expenditures and documentation as required by ODOT. For reporting purposes, quarters are defined as ending with the last day of the following months: December, March, June, and September.
- 3.4 Progressive invoices may be submitted for work completed during the previous month or period showing the actual accrued costs incurred and costs billed to date.
- 3.5 All invoices shall be paid within thirty (30) days following receipt. If any invoice is not acceptable, the time for prompt payment is suspended. ODOT will either promptly provide the LPA with a clear statement regarding any specific cost ineligibility or inform the LPA of any invoice deficiencies that must be eliminated prior to acceptance, processing, or payment by ODOT. If such notification is sent, the required payment date shall be thirty (30) days after receipt of the corrected invoice.
- 3.6 Within thirty (30) days after completion of all work under this Agreement, the LPA shall submit to ODOT a detailed final bill, based on work order accounting covering the actual costs of work performed, and showing where accounts may be audited.
- 3.7 All billing shall conform to ODOT Specifications for Consultant Services requirements and procedures. Any reimbursable travel-related expenses shall be paid in accordance with the requirements and rates as set forth in Rule 126-1-02 of the Ohio Administrative Code, as updated from time to time.
- 3.8 Request for reimbursement to the LPA and copies of all final reports shall be submitted to:

Jeff Shaner
Office of Local Projects
Ohio Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

- 3.9 Payment or reimbursement to the LPA shall be submitted to:

Summit County Engineer
538 E. South Street
Akron, Ohio 44311-1843

4. OBLIGATIONS OF THE LPA

- 4.1 The LPA may engage the services of a consultant to perform the services noted in Exhibit A, attached hereto and incorporated herein as if fully rewritten, upon receipt of the "Authorization to Proceed" from the Project Manager.
 - A. The LPA shall require that any consultant is not subject to recovery under ORC Section 9.24; is an Active registrant on the Federal System for Award Management (SAM), and is not subject to debarment.
- 4.2 The LPA shall submit to ODOT a copy of all contracts and procurements with any one vendor or consultant. All such contracts and procurements shall be subject to the same laws, regulations, and policies that govern this agreement.

- 4.3 The LPA shall review all consultant invoices for the scoped services to ensure accuracy in both amount and in relation to the progress made. The LPA shall submit to ODOT a written request for reimbursement of the Federal share of the expenses involved, according to the cost sharing provisions of this Agreement, attaching copies of all source documentation associated with pending invoices or costs in accordance with the Funding Section noted above.
- 4.4 The LPA shall submit a final comprehensive annual activity report to ODOT no later than June 1, 2020. All final reports shall be accompanied by a properly documented final claim for reimbursement. Any final reports received after June 1 will result in a 10% deduction to the final claim for reimbursement. If any final report is received after July 1, 2020, the final claim will not be reimbursed unless an extension has been approved in writing by ODOT.

5. EXPIRATION AND TERMINATION PROVISIONS

- 5.1 This Agreement commences on the date of the last signature here to and shall expire on June 30, 2020. Upon expiration of this Agreement, the parties may renew this Agreement under the same terms and conditions stated herein. Such renewal shall be by written addendum executed by both parties evidencing their agreement to renew. Any renewal shall be subject to available funding and ORC Section 126.07.
- 5.2 This Agreement and obligation of the parties herein may be terminated by either party with thirty days written notice to the other party. In the event of termination, the LPA shall cease work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 5.3 In the event of termination, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.
- 5.4 If in the event that any dispute arises between ODOT and the LPA concerning interpretation of, or performance pursuant to this Agreement, such dispute shall be resolved solely and finally by the Director of Transportation.

6. COMPLIANCE WITH LAWS

- 6.1 *Drug Free Workplace.* LPA agrees to comply with all applicable federal and state and local laws regarding drug-free workplaces and shall make a good faith effort to ensure that all employees and permitted consultants and subcontractors while working on State property, will not purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.
- 6.2 Nondiscrimination.
- A. In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include,

but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

- B. The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.
- C. During the performance of this contract, the LPA, for itself, its assignees and successors in interest agrees as follows:
- (1) *Compliance with Regulations:* The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

- (2) *Nondiscrimination:* The LPA, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.
- (3) *Solicitations for Consultants, Contractors or Subcontractors, including Procurement of Materials and Equipment:* In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential consultant, contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.
- (4) *Information and Reports:* The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by ODOT or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information,

the LPA will so certify to ODOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

- (5) *Sanctions for Noncompliance:* In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, ODOT will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
- a. withholding of payments to the LPA under the contract until the LPA complies, and/or
 - b. cancellation, termination or suspension of the contract, in whole or in part.
- (6) *Incorporation of Provisions:* The LPA will include the provisions of paragraphs 6.2 (C)(1) through (5) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as ODOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request ODOT to enter into such litigation to protect the interests of ODOT, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

6.3 *Ohio Ethics Laws.* LPA agrees that it they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.

6.4 *Trade:* Pursuant to the federal Export Administration Act and Ohio Revised Code 9.76(B), the LPA and any contractor or sub-contractor shall warrant that they are not boycotting any jurisdiction with whom the United States and the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its Contractors, subcontractors, and any agent of the Contractor or its subcontractors, acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

6.5 *Lobbying:* Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract,

grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

6.6 *Debarment.* LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.

7. CERTIFICATION AND RECAPTURE OF FUNDS

7.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

7.2 If for any reason the PROJECT is found to not be in compliance with all applicable local, state, or federal rules and processes the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT.

8. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

8.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in ORC Section 126.30.

8.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

9. NOTICE

9.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Alan Brubaker, P.E., P.S.	Andrea Stevenson
Summit County Engineer	ODOT, Office of Local Programs
538 E. South Street	1980 W. Broad St., Mail Stop 3180
Akron, Ohio 44311-1843	Columbus, OH 43223
330-643-2850	614.644-8211
abrubaker@summitengineer.net	Andrea.Stevenson@dot.ohio.gov

10. GENERAL PROVISIONS

2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis

Indirect Cost Rate.¹

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, *and*
- (B) The LPA *does not* currently have, and *does not* intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

4. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved

Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.²

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, *and*
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, *and*
- (C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LATP Manual of Procedures.

10.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 10.10 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.

10.1 *Financial Reporting and Audit Requirements:* One or more phases of this Agreement include a sub award of Federal funds to the LPA. Accordingly, the LPA must comply with the financial reporting and audit requirements of 2 CFR Part 200.

All non-federal entities, including ODOT's LPA sub recipients, that have aggregate federal awards expenditures from all sources of \$750,000 or more in the non-federal entity's fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

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Federal and State funds expended to or on behalf of a sub recipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with section 2 CFR §200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

- 10.2 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final Federal voucher for reimbursement of PROJECT expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

- 10.3 It is expressly understood by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all statutory provisions under the Ohio Revised Code, including but not limited to Section 126.07, have been complied with and until such time as all necessary funds are made available to the State by FHWA
- 10.4 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 10.5 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

- 10.6 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 10.7 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 10.8 This Agreement and any attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are suspended by this Agreement. Neither this contract nor any rights, duties or obligation described herein shall be assigned by either party hereto without the prior express written consent of the other party. Any change to the provisions of this Agreement must be made in a written amendment executed by both parties.
- 10.9 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf. Any party hereto may deliver a copy of its counterpart signature page to the Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature of any other party delivered in such a manner as if such signature were an original.

The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA: Summit County Engineer	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By: 	By: 
Title: Deputy Director Engineering Services	Jack Marchbanks, Ph.D. Director
Date: 06/25/2019	Date: 07/01/2019

EXHIBIT A

Structure File Number	Structure Type	SHV Load Rating, EV Load Rating, or Both	# of Hours (Load Rating Only)	Fee Per Hour	Total Fee for Structure
7731124	121	Both	13.25	\$ 113.21	\$ 1,500.00
7732023	121	Both	13.25	\$ 113.21	\$ 1,500.00
7732031	112	Both	20.25	\$ 110.12	\$ 2,230.00
7735162	112	Both	16.25	\$ 110.77	\$ 1,800.00
				Total Fee	\$ 7,030.00

SUM SPECIAL HAULING VEHICLES AND EMERGENCY VEHICLES BRIDGE LOAD RATING PROJECT
COUNTY-ROUTE-SECTION

108424
PID NUMBER

33829
AGREEMENT NUMBER

Approved by:

Ilene Shapiro
Summit County Executive

Date: _____

Approved as to form:

Marvin Evans for
Prosecuting Attorney
County of Summit

Approved as to form:

Deborah S. Matz, Director
Department of Law
County of Summit