

2021-069 EXHIBIT A
COOPERATIVE AGREEMENT
between
COUNTY OF SUMMIT, OHIO
and
THE CITY OF AKRON, OHIO,
CONCERNING
SMITH ROAD RESURFACING

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 Akron, Ohio a charter municipal corporation with its principal place of business at 166 South High Street, Akron, Ohio 44308.

WITNESSETH:

WHEREAS, Smith Road (a.k.a. County Highway 116) extends from the Akron Corporation Limits, just east of Lake of the Woods Blvd to Sand Run Road and passes through both Bath Township and the City of Akron; and

WHEREAS, the County has secured federal Surface Transportation Block Grant funds in the amount of \$700,000.00 for the resurfacing of the portion of Smith Road from the Akron Corporation Limits, just east of Lake of the Woods Blvd to the east side of Sand Run Road (the “Project”) from the Akron Metropolitan Area Transportation Study; and

WHEREAS, the Project is approximately 1.2 miles long. 20% of the paved surface is in the City of Akron and 80% of the paved surface is in Bath Township,

WHEREAS, the Project will positively impact traffic in both communities; and,

WHEREAS, the Project is targeted to be awarded before June 30, 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 City of Akron by the adoption of **Ordinance 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. The City of Akron's responsibilities to fund its portion of the Project and to make payments to the County are set forth below.
 - a. **Scope of Work** –The Scope of Work of the Project shall be the resurfacing of the portion of Smith Road from the Akron Corporation Limits just east of Lake of the Woods Blvd to the east side of Sand Run Road and include the construction of four (4) foot wide paved shoulders where practical and include the placement of pavement markings.
 - b. **County Responsibilities.** The County shall administer the Project, which shall include (i) hiring and supervising Environmental Design Group, 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 has been done pursuant to the Codified Ordinance of the County of Summit. The procurement of 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 making payments to the engineering design consultant of all expenses for the design of the Project, including any "If Authorized" expenses. The County shall be responsible for making all payments to the construction contractor as set forth in the construction contract. Estimated costs and funding allocation of the design and construction phases is as set forth in Table 1, below. Any specialty items requested by either party outside the scope of the project shall be funded 100% by that party, and paid by the County to the respective contractor.

The City shall have the right to approve the portions of the bid documents relating to the City of Akron. Which approval will not be unreasonably withheld, conditioned or delayed. Additionally, the County shall provide in the bid package and the construction contract that 1) the City is a third party beneficiary of the contract; 2) the contractor will be required to work with the City, in conjunction with the County, with respect to work performed in the City of Akron; 3) the City will have direct recourse against the contractor should a dispute arise with respect to work performed in the City

of Akron; 4) the City shall be indemnified by the contractor related to contractor's work on the Project; and 5) the City will be listed as an additional insured on all contractor insurance policies related to the Project.

Estimated Project Costs and Funding

The estimated construction cost, including construction engineering of the Project is \$1,000,000.00. The County has secured Federal Highway Administration's Surface Transportation Block Grant funds in the amount of \$700,000.00 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 component from local agencies. Additional Local Funding will be required for the costs in excess of the Grant and the Local Matching funds. Summit County will pay the 80% of the Local Match, Local Funds, and Engineering Design costs, and the City of Akron pay 20%. Estimated costs and their allocation is set forth in Table 1, below. The federal grant and Local Matching funds shall be exhausted before Local Funds are used. Upon approval of contractor invoices, both the County's portion and the City's portion of the federal grant will be made by the Ohio Department of Transportation (ODOT) pursuant to the County's LPA agreement for this Project with ODOT.

All Lump Sum Items shall be split 80/20, respectively, by the County and the City of Akron. Specialty items beyond the scope of the Project, such as drive pipe replacements, culvert work and rock channel protection, requested by either party in the design or construction phase shall be paid 100% by the requesting party. Cost overruns or change orders not related to Lump Sum Items shall be charged to the respective party based on the location of the related overrun or change order. Overruns or change orders for construction costs in Bath Township will be paid by Summit County at 100% and overruns or change orders for construction costs in the City of Akron will be paid by the City of Akron at 100%. The City shall have the right to approve any change orders that would require the City to pay additional money under this Agreement. The parties shall amend this Agreement to incorporate any change order that would increase the City's share of the below described Project Cost of \$238,140 (inclusive of the Federal Grant Funds and contingency).

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 Akron for their files.

Table 1

Project Phases	Federal Funding \$700,000 (80%)		Local Match \$175,000 (20%)		Local Funds \$125,000 (100%)		Total	
	County 80%	Akron 20%	County 80%	Akron 20%	County 80%	Akron 20%		
Engineering (Design)					\$65,962	\$16,491	\$82,453	
Utilities (if necessary)					TBD	TBD	TBD	
R/W (if necessary)					TBD	TBD	TBD	
Construction & Construction Engineering	\$560,000	\$140,000	\$140,000	\$35,000	\$100,000	\$25,000	\$1,000,000	
						Akron Total	\$216,491	
						County Total	\$865,962	
						TOTAL	\$1,082,453	
	Akron Total Including the \$140,000 Federal Grant but NOT including a 10% budget contingency							\$216,491
	County Total Including the \$560,000 Federal Grant but NOT including a 10% budget contingency							\$865,962
Akron Budget Contingency							10% \$21,649	
SCE Budget Contingency							10% \$86,596	
						TOTAL	\$1,190,698	

c. Akron Responsibilities.

At the completion of the design phase, the County shall invoice the City of Akron for its share of the design cost (\$16,491.00), plus the design cost of specialty items the City has requested, if any. The City of Akron shall pay the County's invoice within 30 days. The total amount of the City's share of the design cost shall not exceed \$20,000 without an amendment hereto.

Prior to advertising for construction bids, the City of Akron shall deposit its share of the Official Engineer's estimate of the Local Match and Local Funds (\$60,000.00) with the County. The County shall notify the City in advance of the date by which the deposit is required. These funds will be utilized as described for the construction, inspection and testing activities

of the project. If at the completion of the project, there are any unspent funds from this deposit, the funds will be refunded to the City of Akron.

If at any time during the project there is either an anticipated or actual cost overrun that depletes or threatens to deplete the above noted City of Akron deposit, or if a change order occurs that is in excess of the City of Akron deposited amount, the City of Akron will, after notice from the County, deposit sufficient funds to permit the contractor to complete the project.

The City of Akron agrees to budget an additional 10% contingency amount above the City's share of the above described Project cost of \$216,491.00. The City 10% contingency is, therefore, \$21,649.00 – for a total Project budget not to exceed \$238,140.00. All requests by the County for contingency funds from the City of Akron in excess of \$21,649.00 shall require, and is subject to, authorization from Akron City Council prior to disbursement.

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

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 mutually agreeable 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 further agree that they, and all of their subcontractors or any person acting upon their behalf will also abide by the terms and conditions of Section 34.03(a) of the Code of Ordinances of the City, which is incorporated by reference and made a part of this Cooperative Agreement as if fully rewritten herein.

The parties certify that they do not maintain and they will not permit their employees to perform 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, pandemic, 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 Akron:

City of Akron
Attn: Dan Horrigan, Mayor
City of Akron
166 S. High Street
Akron, Ohio 44308

With additional notice to:

City of Akron
Attn: Jim Hall, PE, Bureau Manager
Public Works Bureau
166 S. High Street
Akron, Ohio 44308

- 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 Akron Municipal Courts or 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

THE CITY OF AKRON, OHIO

By: _____
Chris D. Ludle
Director of Public Service

Approved as to form and correctness:

Eve V. Belfance
Director of Law
City of Akron, Ohio