

# 2022-106 EXHIBIT A

## COOPERATIVE AGREEMENT between COUNTY OF SUMMIT, OHIO and

### THE CITY OF FAIRLAWN, OHIO, CONCERNING CLEVELAND-MASSILLON 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 Fairlawn, Ohio a charter municipal corporation with its principal place of business at 3487 S. Smith Road Fairlawn, OH 44333.

#### **WITNESSETH:**

**WHEREAS**, Cleveland-Massillon Road (a.k.a. County Highway 17) extends from Ridgewood Rd to Ghent Rd and passes through Copley Township, Bath Township and the City of Fairlawn; and

**WHEREAS**, the City of Fairlawn has secured Federal Surface Transportation Block Grant funds in the amount of \$787,500 for the resurfacing of the portion of Cleveland-Massillon Rd from Ridgewood Rd to Kumho Dr and from Springside Dr to 200 feet south of Ghent Rd;

**WHEREAS**, the Project is approximately 1.27 miles long. Approximately 37% of the paved surface is in the City of Fairlawn and approximately 63% of the paved surface is in Bath Township and Copley Township,

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

**WHEREAS**, the Project is targeted to be awarded before June 15, 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 Fairlawn by the adoption of **Ordinance No. 2022-010 \_\_\_\_\_**; 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 City of Fairlawn (City).** The City 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 County of Summit, Ohio (County) responsibilities to fund its portion of the Project and to make payments to the City are set forth below.
  - a. **Scope of Work** –The Scope of Work of the Project shall be the resurfacing of the portion of Cleveland-Massillon Rd from Ridgewood Rd to the south end of the recent widening project along Cleveland Massillon Rd and from Springside Dr to 200 feet south of Ghent Rd; and include the construction of four (4) foot wide paved shoulders where practical, provide curb cuts and ADA compliant ramps, and include the placement of pavement markings.
  - b. **City’s Responsibilities.** The City shall administer the Project, which shall include (i) hiring and supervising Environmental Design Group, Inc. (Consultant), 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 accomplished pursuant to the Codified Ordinance of the City of Fairlawn. The procurement of the construction contractor shall be performed pursuant to the Codified Ordinances of the City of Fairlawn and the Project shall be constructed in compliance with the City of Fairlawn and Summit County standards.

The City 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 City shall be responsible for receiving and approving (or rejecting) all contractor invoices and paying the City portion(s) of the invoice. The City will then forward the remainder of the invoice to the County for the County to pay its portion of the invoice before forwarding the invoice to the Ohio Department of Transportation for the remaining portion of the invoice payment. Evidence of payment of the contractor’s invoice by both the City and County shall be forwarded to ODOT as per ODOT regulations.

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 paid for by the

requesting party. The City shall provide in the bid package and the construction contract that 1) the County is a third party beneficiary of the contract; 2) the contractor will be required to work in conjunction with the County with respect to work performed in Copley and/or Bath Townships; 3) the County will have direct recourse against the contractor should a dispute arise with respect to work performed in Copley and/or Bath Townships; 4) the County shall be indemnified by the contractor related to contractor's work on the Project; and 5) the County will be listed as an additional insured on all contractor insurance policies related to the Project.

- c. **County's Responsibilities.** The County shall have the right to review and approve the portions of the bid documents relating to Copley and Bath Townships, which approval will not be unreasonably withheld, conditioned, or delayed. The County shall have the right to provide inspection for the portion of work in Bath and Copley Townships. Within 30 days of receipt, the County shall pay their portion of invoices that are submitted to the County's Project Manager for the design portion of the project and to the County's Construction Manager for the construction phase of the project.

#### **Estimated Project Costs and Funding**

The estimated design cost, including all surveying, environmental engineering, preliminary and final design engineering of the Project is not to exceed \$143,743.00. The City will pay 37% of the estimated design cost and the County will pay 63% of the estimated design cost.

The estimated construction cost, including construction engineering of the Project is \$1,118,616. The City has secured Federal Highway Administration's Surface Transportation Block Grant funds ("Federal Grant") in the amount of \$787,500 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. Fifty percent of the required matching component (\$87,500) will be funded by Toll Revenue Credits program provided the local agencies complete the design phase including the advertising for contractors, opening bids and awarding the construction contract prior to the ODOT/AMATS commitment dates. Additional Local Funds will be required for the costs in excess of the Federal Grant and the Local Match funds. The City will pay 37% of the Local Match, Local Funds, and Engineering Design costs. The County will pay 63% of the same costs.

Estimated costs and their allocations are set forth in Table 1, below. The Federal Grant and Local Match funds shall be exhausted before Local Funds are used. Upon approval of contractor invoices, both the City's portion and

the County’s portion of the Federal Grant will be made by the Ohio Department of Transportation (ODOT) pursuant to the City’s LPA agreement for this Project with ODOT.

All Lump Sum Items shall be split 37%/63%, respectively, by the City and County. 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 Copley and Bath Township will be paid by Summit County at 100% and overruns or change orders for construction costs in the City of Fairlawn will be paid by the City at 100%. The County shall have the right to approve any change orders that would require the County to pay additional money under this Agreement. The parties shall amend this Agreement to incorporate any change order that would increase the following described Project Cost of \$1,262,359 (inclusive of the Federal Grant funds).

The City may utilize its capital improvement funds to pay for the design and construction of the project. 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 County for their files.

**Table 1**

Project Phases	Federal Grant \$787,500 (90%)	Local Match \$87,500 (10%)		Local Funds \$243,616 (100%)		Total
		City 37% of 10%	County 63% of 10%	City 37% of EDG Contract	County 63% of EDG Contract	
Engineering (Design)	\$0	\$0	\$0	\$ 53,185	\$ 90,558	\$143,743
Utilities (If necessary)	\$0			TBD	TBD	TBD
R/W (If necessary)	\$0			TBD	TBD	TBD
Construction & Construction Engineering	\$787,500	\$32,375	\$55,125	\$90,138	\$153,478	\$1,118,616
				<b>Federal Total</b>		<b>\$787,500</b>
				<b>County Total</b>		<b>\$ 299,161</b>
				<b>City Total</b>		<b>\$ 175,698</b>
				<b>Total Project Cost</b>		<b>\$1,262,359</b>

This table does not include any allowance for contingency funding.

**d. Counties Responsibilities.**

At the completion of the design phase, the City shall invoice the County for its share of the design cost (\$ 90,558), plus the design cost of specialty items the County has requested, if any. The County shall pay the City's invoice within 30 days. The total amount of the County's share of the design cost shall not exceed \$ 90,558 without an amendment hereto.

The County will review all submittals provided by the City and provide any comments to the City's 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 City 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 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 City of Fairlawn:**

City of Fairlawn  
Attn: William Roth Jr, Mayor  
City of Fairlawn  
3487 S Smith Road  
Fairlawn, OH 44333

With additional notice to:

City of Fairlawn  
Attn: Ernie Staten  
Director of Public Service/Utility Commissioner/Street Commissioner  
3300 Fairlawn Service Dr.  
Fairlawn, OH 44333

**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  
Attn: Alan Brubaker, P.E.,P.S

- 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

\_\_\_\_\_  
Alan Brubaker, Summit County Engineer

APPROVED AS TO FORM:

\_\_\_\_\_  
Marvin D. Evans, Assistant Prosecutor  
For Summit County Prosecutor

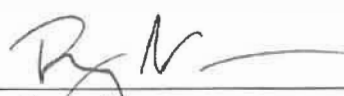
APPROVED AS TO FORM:

\_\_\_\_\_  
Deborah S. Matz  
Director, Department of Law

**THE CITY OF FAIRLAWN, OHIO**

By:   
\_\_\_\_\_  
William J. Roth, Jr.  
Mayor

Approved as to form and correctness:

  
\_\_\_\_\_  
R. Bryan Nace  
Law Director

Date: March 21, 2022