

LPA FEDERAL PROJECT AGREEMENT

THIS AGREEMENT, made the _____ day of _____ 2001, between the State of Ohio, acting by and through the Director of Transportation of the State of Ohio, hereinafter referred to as the STATE and the **City of Gahanna** hereinafter referred to as the LPA.

WITNESSETH:

WHEREAS, The Transportation Equity Act for the 21st Century has made available certain Federal funding for use by local public agencies; and,

WHEREAS, The Federal Highway Administration (hereinafter referred to as FHWA) designates the Ohio Department of Transportation (hereinafter referred to as ODOT) as the agency in Ohio to administer FHWA's Federal funding programs; and,

WHEREAS, FRA-US62/CR17-26.34/9.18, PID Number 22374 (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding; and,

WHEREAS, the LPA has received funding approval for the PROJECT from the Program Manager having responsibility for the Federal funds involved, and

WHEREAS, it is the mutual desire of both ODOT and the LPA to have the LPA serve as the responsible lead agency for the administration of the project.

NOW, THEREFORE, and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed between the STATE and the LPA as follows:

SECTION I - PURPOSE

The purpose of this Agreement is to set forth requirements associated with the Federal funds availability for the PROJECT and to establish the responsibilities for the administration of the PROJECT by the LPA and ODOT.

SECTION II - LEGAL REFERENCES

This Agreement is established pursuant to Title 23 U.S.C.; Section 5501.03 of the Ohio Revised Code; and ODOT Policy No. 410-001, Local Federal Projects.

SECTION III - SCOPE OF WORK

Attachment One, hereby incorporated into this Agreement in its entirety, shall constitute a complete and detailed description of the PROJECT with respect to the scope and intent of the transportation improvement(s) to be constructed, categories of relevant development activities and their costs, and the specific sources and status of funds to be made available for their accomplishment.

SECTION IV - GENERAL REQUIREMENTS

The LPA shall designate a fully qualified professional engineer to act as Project Engineer and serve as the LPA's principle representative for the PROJECT. Detailed design, preparation of construction plans and specifications, and other development activities for the PROJECT shall be performed by or under the close direction of the Project Engineer.

Attachment Two, "Required Contract Provisions Federal-Aid Construction Contracts" is incorporated into this Agreement in its entirety. The LPA shall include these provisions within all of its contracts involving the development or administration of the PROJECT.

The LPA shall comply with all applicable Federal and State laws, regulations, and executive orders. This obligation is in addition to compliance with any law, regulation or executive order specifically referenced in this Agreement.

SECTION V - COST SHARING AND USE OF FUNDS FOR THE PROJECT

As set forth in Attachment One hereto, the total development cost for the PROJECT is estimated to be **\$4,110,000**. The LPA is providing an estimated **70% (seventy percent)** of the project cost. Funds provided through ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities **for the rehabilitation and widening of FRA-62-2672 structure over Rocky Fork Creek**. The costs of preliminary development, final engineering design and the acquisition of right of way are not eligible for funding under this Agreement. From the Federal and State funds made available for these purposes by the FHWA and ODOT, ODOT shall provide the LPA with eligible costs associated with these approved categories at an approximate rate of **30% (thirty percent)**, up to a maximum of **\$1,350,000**. This maximum Federal and State amount reflects the funding limit for the PROJECT set by the Program Manager. The LPA shall provide all other financial resources necessary to fully complete the PROJECT, inclusive of cost overruns and contractor claims.

SECTION VI - PROJECT DEVELOPMENT STATUS

Throughout all phases of the PROJECT, the LPA shall periodically submit information updates to the ODOT District LPA Representative detailing progress achieved and/or changes made relative to the PROJECT's scope, timing, costs and funding commitments.

SECTION VII - ENVIRONMENTAL ASSESSMENT and CLEARANCE DOCUMENTS

The LPA shall be responsible for conducting any required public involvement events, and the preparation of all required documents, reports and other supporting materials needed for addressing applicable environmental assessment and clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act. All such documents shall be prepared by fully qualified professionals in a thorough and expert manner and in accordance with ODOT's Transportation Development Process. ODOT shall be responsible for the review of all such documents and reports, and complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance. In coordination with the District LPA Representative, the District Environmental Coordinator will serve as the primary point of contact for submittal of all environmental clearance documentation.

The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements.

SECTION VIII - PERMITS and CERTIFICATIONS

The LPA shall be responsible for obtaining all permits necessary for the PROJECT, including any local government construction permits.

For PROJECT's having involvement with water, waterways and/or wetlands, the LPA shall be responsible for obtaining any applicable permits and/or certifications; for example: a Section 404 Water Quality Certification from the U.S. Army Corps of Engineers; a Section 401 Dredge and Fill Permit from the Ohio Environmental Protection Agency; a Section 10 Rivers and Harbors Act Permit from the U.S. Army Corps of Engineers; a Section 9 Rivers and Harbors Act Permit from the U.S. Coast Guard; or an NPDES Stormwater Discharge

Permit 9 for the construction site from the Ohio Environmental Protection Agency.

SECTION IX - RIGHT OF WAY

Right of way acquisition and relocation assistance activities shall be performed in accordance with the requirements of both the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), including any related Federal regulations issued by the FHWA, and State policies and procedures issued by ODOT. All PROJECT utility relocation activities shall be performed in compliance with 23 CFR Part 645 and the ODOT Utilities Manual.

All activities pertaining to the acquisition of right of way for the PROJECT shall be performed by either ODOT real estate staff, or by fully qualified LPA staff that have been prequalified by ODOT, or third-party professionals experienced in the requirements of the Uniform Act and the associated policies of the FHWA, and who have been prequalified by ODOT. Formal appraisals shall be performed by ODOT staff appraisers, LPA staff appraisers that have been prequalified by ODOT, or by licensed appraisers who possess the appropriate level of professional certification from the Ohio Department of Commerce and who are experienced in the requirements of the Uniform Act and the associated policies of the FHWA, and have been prequalified by ODOT. Likewise, the appraisal review function must be performed by ODOT, by LPA review appraisers that have been prequalified by ODOT, or by fee review appraisers who are certified and prequalified by ODOT.

In the event that the LPA and/or its consultants perform the necessary real estate services, the LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that such right of way has been cleared of all encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the PROJECT real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA.

The LPA agrees that all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT will be subject to the approval of ODOT and FHWA.

SECTION X - PLANS, SPECIFICATIONS and ESTIMATE

All architectural/engineering plans and designs, specifications, estimates of material

quantities, and any other documents necessary to advertise the PROJECT for competitive bidding and construction, shall be signed and sealed by a fully qualified licensed professional engineer. Construction materials specifications for the PROJECT shall include the "Steel Made in the United States" provision pursuant to Sections 153.011 and 5525.21 of the Ohio Revised Code. The LPA shall provide to ODOT no less than forty-five days prior to a scheduled bid opening date, a complete PS&E Package consisting of at least the following: PROJECT plans and specifications; the Project Engineer's detailed construction cost estimate; a copy of this Agreement; a completed Plan Package Submittal Form; an Environmental Consultation Form demonstrating continuing sufficiency of the PROJECT's environmental clearance activities, including historic preservation requirements, unfulfilled impact mitigation commitments, and issuance of any required permits; and a Right of Way Certification.

SECTION XI - FEDERAL AUTHORIZATION and COMPETITIVE BIDDING

ODOT shall submit the necessary documents to the FHWA to obtain Federal construction authorization for advertising and shall execute a Federal-aid agreement with the FHWA for the PROJECT. Upon receipt of Federal authorization, the LPA shall advertise the PROJECT for three weeks, competitively bid the PROJECT, and award the contract in accordance with **Section 735.05 of the Ohio Revised Code**. In the event the lowest and best bid is in excess of the official construction cost estimate, concurrence from the Program Manager must be secured prior to the award of a construction contract.

SECTION XII - CONSTRUCTION BONDS AND INSURANCE OF CONTRACTOR

The LPA shall require that the selected contractor provide a performance bond and a separate payment bond in the full amount of the LPA's official construction cost estimate. The LPA and ODOT shall both be named as obligees on the bonds. The LPA shall also require that the selected contractor have and maintain a commercial and general liability insurance policy with minimum coverage amounts of \$500,000 per occurrence.

SECTION XIII - CONSTRUCTION SUPERVISION

The work of the construction contractor shall be performed under the general supervision and direction of the Project Engineer who shall provide or provide for inspection activities sufficient to assure the contractor's compliance with all applicable construction standards and material specifications required for the PROJECT. The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost incurred by the LPA on the PROJECT.

SECTION XIV - PAYMENT OF PROJECT INVOICES

The LPA shall review/prepare invoices for work performed on the PROJECT and ensure their accuracy in both amount and in relation to the progress made on the PROJECT. The LPA may periodically submit to ODOT a written request for either current payment or reimbursement of the Federal share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. ODOT shall pay or reimburse the LPA, or at the request of the LPA with concurrence of ODOT, pay directly to the LPA's construction contractor, the eligible items of expense in accordance with the cost sharing provisions of Section V of this Agreement. If the LPA elects to have the contractor paid directly, Attachment Two to this agreement shall be completed and submitted with the project bid tabulations. In addition, the contractor is required to establish Electronic Funds Transfer with the State of Ohio.

Each request for payment or reimbursement submitted by the LPA, or for payment by the contractor, shall conform in all respects to Federal-Aid Policy Guide-Subchapter G, Part 635, Subpart A and amendments or revisions thereof, and to applicable State of Ohio billing requirements and procedures. ODOT shall pay each approved request for payment or reimbursement within thirty calendar days after its receipt of a proper invoice.

Within thirty days after completion of all work under this Agreement, the LPA or the contractor shall submit to ODOT a detailed final request, based on work order accounting covering the actual costs of work performed. Information as to the location of PROJECT records showing where accounts may be audited shall also be provided.

Requests for payment or reimbursement shall be submitted to:

**Ohio Department of Transportation, District Six
Attention: Tracy L. Allen
400 East William Street
Delaware, OH 43015-2199**

SECTION XV - MAINTENANCE OF THE PROJECT

After completion of the PROJECT and in accordance with the applicable provisions of the Ohio Revised Code, the LPA shall provide adequate maintenance activities for the improved transportation facility.

SECTION XVI - CERTIFICATION OF FUNDS

It is 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 of 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 and forthcoming from the appropriate State and Federal agencies, and, if necessary, such expenditure of funds is approved by the Controlling Board of the State of Ohio.

SECTION XVII - RECAPTURE OF FUNDS

Unless otherwise directed by ODOT, if, for any reason, the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed in behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it had received for the PROJECT.

SECTION XVIII - AUDIT REQUIREMENT

The LPA shall comply with the audit requirements of 49 CFR Part 90 (Federal Single Audit Act). Copies of such completed audit reports shall be submitted to the ODOT Division of Finance in a timely fashion.

SECTION XIX - RECORD RETENTION

The LPA, when requested at reasonable times and in reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records 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 ODOT approves the LPA's final request 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.

SECTION XX - OHIO ETHICS LAW REQUIREMENTS

The LPA shall adhere to the requirements of Ohio ethics law as provided by Section 102.04 of the Ohio Revised Code in the same manner as if its officials were State officials and its employees were State employees.

SECTION XXI - DRUG-FREE WORK PLACE

The LPA agrees to comply with all applicable State and Federal law regarding a drug-free work place. The LPA shall make a good faith effort to ensure that its employees will not purchase, transfer, use, or possess illegal drugs, or abuse prescription drugs in any way.

SECTION XXII - EQUAL EMPLOYMENT OPPORTUNITY

In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, handicap, age, Vietnam-era veteran status, or disability as that term is defined in the American with Disabilities Act. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, national origin, handicap, age, Vietnam-era veteran status, or disability. 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 apprenticeship.

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, sexual orientation, national origin, handicap, age, Vietnam-era veteran status or disability. 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.

The LPA agrees to ensure that Minority Business Enterprises, as such are defined in 49 CFR Part 23, will have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in

conjunction with this Agreement.

SECTION XXIII - DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work under Section III of this Agreement become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT shall relinquish any such protections should they exist.

The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

SECTION XXIV - 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 law 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.

SECTION XXV - CAPTIONS

The captions in this Agreement are for the convenience of reference only and in no way define, limit, or describe the scope or intent of this Agreement or any part hereof and shall not be considered in any construction hereof.

SECTION XXVI - DEFAULT AND BREACH OF CONTRACT

Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, shall be an event of default, unless such failure or misrepresentation are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. The LPA, however, shall remedy as soon as possible each cause preventing its compliance with this Agreement.

If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty days from the date of such notification to remedy the causes preventing its compliance and curing the default situation. Expiration of the thirty days and failure by the LPA to remedy the default, whether or not payment of funds has been fully or partially made, shall result in ODOT declining to make any further payments to the LPA, termination of this Agreement by ODOT, and, pursuant to Article XVII of this Agreement, the requirement that the LPA shall repay to ODOT all of the Federal funds disbursed to it under this Agreement.

Upon a termination of this Agreement by ODOT, ODOT shall conduct an inspection of the PROJECT to determine whether or not the PROJECT has been completed to a degree acceptable to ODOT. If the PROJECT is not completed to a degree and condition acceptable to ODOT, then the PROJECT shall not be deemed to be completed in its entirety, and, pursuant to Article XVII of this Agreement, the LPA shall repay to ODOT all the Federal funds disbursed to it under this Agreement.

The LPA, upon receiving a notice of termination from ODOT, shall cease work on the terminated activities covered under this Agreement, terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs, and furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

SECTION XXVII - INDEMNIFICATION

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 Section 126.30 of the Revised Code. The Recipient shall indemnify and hold harmless the Director, ODOT, the State and their respective officers, directors, members, agents and employees from any and all liability arising out of or pursuant to this Agreement, Recipient's use or application of the funds being provided by ODOT hereunder and Recipient's construction or management of the PROJECT.

SECTION XXVIII - EFFECTIVE DATE / TERMINATION DATE OF AGREEMENT

This Agreement shall be effective as of the above date. This Agreement shall terminate on **June 30, 2003**. At that time, ODOT may renew this Agreement on the same terms and conditions for a period beginning **July 1, 2003**, and ending no later than **June 30, 2005**, or earlier provided that the party's contractual obligations have been completed, by giving written notice to the LPA by **July 1, 2003**. However, whereas this Agreement may be renewed for the period specified above, under no circumstance shall ODOT provide to the LPA more than the cost sharing provision as outlined in Section V of this Agreement.

All financial obligations of ODOT under this Agreement and any renewal thereof are subject to the appropriation of sufficient funds by the General Assembly. If at any time sufficient funds are not appropriated to continue funding the payments due under this Agreement, or any renewal thereof, this Agreement, or any renewal thereof, will terminate on the date the available appropriation expires without any further obligation by ODOT.

SECTION XXIX - ENTIRE AGREEMENT

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. This Agreement shall not be altered, modified, or amended except by a written agreement signed by each of the parties hereto.

SECTION XXX - 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.

SECTION XXXI - NOTICE

Notice under this Agreement shall be directed as follows:

If to the LPA:

**Karl C. Wetherholt, P.E.
City Engineer
City of Gahanna
200 South Hamilton Road
Gahanna, OH 43230-2996**

If to ODOT:

**Ohio Department of Transportation
District Six
Attention: Tracy L. Allen
400 East William Street
Delaware, OH 43015-2199**

SECTION XXXII - SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in duplicate as of the day and year first above written.

LPA

By: _____
LPA title

ODOT

By: _____
Gordon Proctor, Director