

CFDA 20.205

Appendix G: SAMPLE LPA DIESEL EMISSION REDUCTION GRANT PROGRAM AGREEMENT for public sector projects

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 LPA Name, hereinafter referred to as the "LPA", LPA Address Columbus, OH 00000.

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. 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 (D.) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, 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 **project description**(hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal Congestion Mitigation and Air Quality Program funding.
- 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 LPA administration of the PROJECT.

2. LEGAL REFERENCES

- 2.1 This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:
 - a. Section 5501.03(D.) of the Ohio Revised Code;
 - b. ODOT Locally Administered Transportation Projects, Manual of Procedures
 - c. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105.
- 2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. 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 \$total project cost. ODOT shall provide to the LPA eighty (80) percent of the project costs, up to a maximum of \$DERG funded amount in Federal funds. This maximum amount reflects the funding limit for the

PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual cost of the transportation project improvement.

- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.

4. PROJECT DEVELOPMENT

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.
- 4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.
- 4.3 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITES

- 5.1 The proposed project is a stand-alone transportation action that based on ODOT's past experience with similar actions, will not result in significant impacts to the human and/or natural environment and does not require further NEPA approvals.
- 5.2 In accordance with existing regulations and the 2015 Programmatic Categorical Exclusion (CE) Agreement, a C1 level CE can be prepared for the proposed project via the Online CE System and submitted to ODOT's Office of Environmental Services (OES) for review and approval purposes.
- 5.3 If the proposed project will have impacts on environmental resources, the level of CE will be elevated to the next appropriate higher level (including completion of necessary environmental studies). If impacts are anticipated or it is unclear whether or not impacts will occur, consultation with the District Environmental Coordinator (DEC) will take place to assure assessment of impacts is conducted in accordance with NEPA and existing regulations. The appropriate level CE and applicable environmental studies will be prepared using the Online CE System and submitted to ODOT-OES for review and approval purposes.

6. RIGHT OF WAY RESPONSIBILITES

The LPA agrees that no work for this project will be performed within roadway right of

way. The LPA further agrees that any necessary rights for work outside of roadway right of way have been previously secured by the LPA.

7. ADVERTISING, SALE AND AWARD

- 7.1 The LPA **shall not** advertise for bids prior to the receipt of the “Federal Authorization to Advertise” notification from ODOT. Should advertising or work commence prior to the receipt of the “Authorization to Advertise” notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT Program Manager. All sole source or proprietary bid items should be brought to the attention of the ODOT Program Manager as soon as possible so as not to cause a delay in the plan package submission process.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period. ODOT shall approve such addendum for project eligibility. The addendum shall be distributed to all potential bidders prior to opening bids and selling the contracts.

8. CERTIFICATION AND RECAPTURE OF FUNDS

- 8.1 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.
- 8.2 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 on 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.

9. NONDISCRIMINATION

- 9.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or

applicant for employment because of race, religion, color, sex, national origin, ancestry, age, or disability as that term is defined in the Americans 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, national origin, ancestry, age, 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.

9.2 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, national origin, ancestry, age, 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.

9.3 For any project in which the grant exceeds \$500,000, the LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal 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. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the Ohio Revised Code.

WAIVER PROCESS FOR DBE GOALS

In the event the Contractor is unable to meet the DBE Goal placed on this project, a request for waiver of all or part of the goal may be made to the Ohio Department of Transportation with a copy sent to the LPA. The written request must indicate that a good faith effort was made to meet the goal and be sent to ODOT's Office of Contracts with a copy to the ODOT District LPA Coordinator. The Planning and Programs Administrator will review the request and then forward it to the Department's Central Office. Central Office will review the submitted documentation and decide the issue within ten (10) business days. There will be no extension of the time for the project granted if the prime Contractor wishes to avail himself of this process. The LPA will be notified as to the decision.

ODOT shall supply the percentage goal to the LPA upon review of the grant. The LPA must obtain written, signed documentation from the contractor that the DBE goal has been satisfied prior to executing the contract with the Contractor. The LPA, in turn, must

provide such documentation to ODOT in order for ODOT to encumber the Federal/State funds.

10. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

10.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its vendors or contractors performing work 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.

10.2 The LPA shall not allow its vendors 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 vendor 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.

11. TERMINATION; DEFAULT AND BREACH OF CONTRACT

11.1 This Agreement may be terminated at any time unilaterally by ODOT for any violation of this Agreement. If the Agreement is terminated, the LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

11.2 ODOT and the LPA each recognize that the other is self-insured by the Ohio Department of Administrative Services. Nothing in this agreement shall be construed as an indemnification by one party of the other for liabilities of the other party or third parties for property loss, damage, personal injury, or any other actionable negligence arising out of and/or during the use described in this agreement. Any liability for claims involving property loss, damage, personal injury, or any other actionable negligence by a party, its employees, agents, invitees, contractors, or by third persons, arising out of and during the activities associated with this agreement shall be determined in accordance with Chapter 2743 of the Ohio Revised Code.

11.3 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 (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default

situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

- 11.4 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any vendors or contractors. Otherwise, the LPA shall 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. At the request of ODOT, the LPA may be required to 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.
- 11.5 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.

12. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 12.1 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 section 126.30 of the Revised Code.
- 12.2 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.

13. NOTICE

- 13.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

LPA Contact, Title
LPA Name
LPA Address
Columbus,_OH_00000_

ODOT Contact, Title
Ohio Department of Transportation
1980 W. Broad St.
Columbus, OH 43223

14. GENERAL PROVISIONS

14.1 *Contract Administration:* The LPA shall certify both the quantity and quality of material used and the quality of the work performed, when applicable, incurred by the LPA for the eligible work on the PROJECT. The LPA shall certify that the PROJECT is in accordance with the scope and material specifications or approved amendments thereto.

14.1. A. The Federal-aid Highway Program operates on a reimbursement basis. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must 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. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

14.1. B. ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's Vendor ("Vendor"), the eligible items of expense in accordance with the cost sharing provisions of this Agreement. If the LPA requests to have the Vendor paid directly, Attachment 1 to this Agreement shall be completed and submitted with the project bid tabulations / RFPs and the Vendor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Vendor or reimburse the LPA within thirty (30) days of receipt of the approved Vendor's invoice from the LPA.

14.2 *Project Maintenance:* After completion of the PROJECT and in accordance with Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, the LPA shall maintain the PROJECT and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under LPA ownership and operational authority for the standard industry useful life of the improvement, or X years/Y miles/Z hours of service, unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies to be corrected by the LPA within a reasonable amount of time and at their cost.

14.3 *Original Equipment Disposition:* The original diesel powered vehicles or equipment associated with the PROJECT must be permanently destroyed or remanufactured to newer (higher tier) pollutant emission standards. This must be verified prior to payment

or reimbursement.

14.4 *Payment to LPA:* Payment or reimbursement to the LPA shall be submitted to:

LPA Name
LPA Address
Columbus, OH 00000

14.5 *Audit Requirements:* The LPA shall comply with the audit requirements of 2 CFR 200 Subpart F - Audit Requirements.

14.6 *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 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 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.

14.7 *Ohio Ethics Laws:* LPA agrees that 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 Ohio Revised Code.

14.8 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on state property.

14.9 *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.

- 14.10 *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.
- 14.11 *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. This Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 14.12 *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.
- 14.13 *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.

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

LPA:
LPA Name

STATE OF OHIO,
DEPARTMENT OF
TRANSPORTATION

By: _____
LPA Contact, Title

By: _____
Jerry Wray, Director

Date: _____

Date: _____

Attachment 1

DIRECT PAYMENT OF CONTRACTOR

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA’s contractor shall be paid directly to the Vendor in the prorata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this agreement, and shall indicate that the payment is to be made to the vendor. In addition, the invoice must state the Vendor’s name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

We the LPA Name request that all payments for the Federal/State share of the equipment costs of this agreement performed by Error! Reference source not found. be paid directly to Error! Reference source not found. Error! Reference source not found.

VENDOR Name:
Oaks Vendor ID: 0000000000
Mailing Address:

LPA signature: _____

LPA Name: LPA Name
Oaks Vendor ID: 0000000000
Mailing Address: LPA Address
Columbus, OH 00000

Approved, ODOT signature

CFDA 20.205

Appendix G: LPA DIESEL EMISSION REDUCTION GRANT PROGRAM AGREEMENT for PPP projects

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 LPA Name, hereinafter referred to as the "LPA", LPA Address Columbus, OH 00000. The LPA is serving as the public sponsor through a Public Private Partnership, for Company Name, Street Address Company City, OH 00000, as the private partner, hereinafter referred to as the "Company". A separate Public-Private-Partnership Agreement (Attachment 2 to this agreement) between the LPA and Company Name documents the project management and cost reimbursement the parties will follow in completing this federal aid project.

Company, pursuant to the Public-Private Partnership agreement and as signatory to this agreement, will jointly work with the LPA to implement the project consistent with the agreement provisions. Company affirms that all agreement LPA provisions are also assigned to Company.

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. 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 (D.) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, 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 project description (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal Congestion Mitigation and Air Quality Program funding.
- 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 LPA administration of the PROJECT.

2. LEGAL REFERENCES

- 2.1 This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:
 - a. Section 5501.03(D.) of the Ohio Revised Code;
 - b. ODOT Locally Administered Transportation Projects, Manual of Procedures
 - c. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105.
- 2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive

orders, and applicable ODOT manuals and guidelines. 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 \$total project cost. ODOT shall provide to the LPA eighty (80) percent of the project costs, up to a maximum of \$DERG funded amount in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual cost of the transportation project improvement.
- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.

4. PROJECT DEVELOPMENT

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.
- 4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.
- 4.3 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITES

- 5.1 The proposed project is a stand-alone transportation action that based on ODOT's past experience with similar actions, will not result in significant impacts to the human and/or natural environment and does not require further NEPA approvals.
- 5.2 In accordance with existing regulations and the 2015 Programmatic Categorical Exclusion (CE) Agreement, a C1 level CE can be prepared for the proposed project via the Online CE System and submitted to ODOT's Office of Environmental Services (OES) for review and approval purposes.
- 5.3 If the proposed project will have impacts on environmental resources, the level of CE will be elevated to the next appropriate higher level (including completion of necessary environmental studies). If impacts are anticipated or it is unclear whether or not impacts will occur, consultation with the District Environmental Coordinator (DEC) will take place

to assure assessment of impacts is conducted in accordance with NEPA and existing regulations. The appropriate level CE and applicable environmental studies will be prepared using the Online CE System and submitted to ODOT-OES for review and approval purposes.

6. RIGHT OF WAY RESPONSIBILITIES

The LPA agrees that no work for this project will be performed within roadway right of way. The LPA further agrees that any necessary rights for work outside of roadway right of way have been previously secured by the LPA.

7. ADVERTISING, SALE AND AWARD

7.1 The LPA **shall not** advertise for bids prior to the receipt of the “Federal Authorization to Advertise” notification from ODOT. Should advertising or work commence prior to the receipt of the “Authorization to Advertise” notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.

7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT Program Manager. All sole source or proprietary bid items should be brought to the attention of the ODOT Program Manager as soon as possible so as not to cause a delay in the plan package submission process.

7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period. ODOT shall approve such addendum for project eligibility. The addendum shall be distributed to all potential bidders prior to opening bids and selling the contracts.

8. CERTIFICATION AND RECAPTURE OF FUNDS

8.1 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.

8.2 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 on 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.

9. NONDISCRIMINATION

- 9.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, age, or disability as that term is defined in the Americans 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, national origin, ancestry, age, 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.
- 9.2 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, national origin, ancestry, age, 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.
- 9.3 For any project in which the grant exceeds \$500,000, the LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal 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. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the Ohio Revised Code.

WAIVER PROCESS FOR DBE GOALS

In the event the Contractor is unable to meet the DBE Goal placed on this project, a request for waiver of all or part of the goal may be made to the Ohio Department of Transportation with a copy sent to the LPA. The written request must indicate that a good faith effort was made to meet the goal and be sent to ODOT's Office of Contracts with a copy to the ODOT District LPA Coordinator. The Planning and Programs Administrator will review the request and then forward it to the

Department's Central Office. Central Office will review the submitted documentation and decide the issue within ten (10) business days. There will be no extension of the time for the project granted if the prime Contractor wishes to avail himself of this process. The LPA will be notified as to the decision.

ODOT shall supply the percentage goal to the LPA upon review of the grant. The LPA must obtain written, signed documentation from the contractor that the DBE goal has been satisfied prior to executing the contract with the Contractor. The LPA, in turn, must provide such documentation to ODOT in order for ODOT to encumber the Federal/State funds.

10. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 10.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its vendors or contractors performing work 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.
- 10.2 The LPA shall not allow its vendors 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 vendor 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.

11. TERMINATION; DEFAULT AND BREACH OF CONTRACT

- 11.1 This Agreement may be terminated at any time unilaterally by ODOT for any violation of this Agreement. If the Agreement is terminated, the LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 11.2 ODOT and the LPA each recognize that the other is self-insured by the Ohio Department of Administrative Services. Nothing in this agreement shall be construed as an indemnification by one party of the other for liabilities of the other party or third parties for property loss, damage, personal injury, or any other actionable negligence arising out of and/or during the use described in this agreement. Any liability for claims involving property loss, damage, personal injury, or any other actionable negligence by a party, its employees, agents, invitees, contractors, or by third persons, arising out of and during

the activities associated with this agreement shall be determined in accordance with Chapter 2743 of the Ohio Revised Code.

- 11.3 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 (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 11.4 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any vendors or contractors. Otherwise, the LPA shall 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. At the request of ODOT, the LPA may be required to 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.
- 11.5 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.

12. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 12.1 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 section 126.30 of the Revised Code.
- 12.2 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.

13. NOTICE

13.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

LPA Contact, Title

ODOT Contact, Title

LPA Name

Ohio Department of Transportation

LPA Address

1980 W. Broad St.

Columbus, Oh 00000

Columbus, OH 43223

14. GENERAL PROVISIONS

14.1 *Contract Administration:* The LPA shall certify both the quantity and quality of material used and the quality of the work performed, when applicable, incurred by the LPA for the eligible work on the PROJECT. The LPA shall certify that the PROJECT is in accordance with the scope and material specifications or approved amendments thereto.

14.1. A. The Federal-aid Highway Program operates on a reimbursement basis. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must 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. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

14.1. B. ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's Vendor ("Vendor"), the eligible items of expense in accordance with the cost sharing provisions of this Agreement. If the LPA requests to have the Vendor paid directly, Attachment 1 to this Agreement shall be completed and submitted with the project bid tabulations / RFPs and the Vendor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Vendor or reimburse the LPA within thirty (30) days of receipt of the approved Vendor's invoice from the LPA.

14.2 *Project Maintenance:* After completion of the PROJECT and in accordance with Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, the LPA shall maintain the PROJECT and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under LPA ownership and operational authority for the standard industry useful life of the

improvement, or X years/Y miles/Z hours of service, unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies to be corrected by the LPA within a reasonable amount of time and at their cost.

14.3 *Original Equipment Disposition:* The original diesel powered vehicles or equipment associated with the PROJECT must be permanently destroyed or remanufactured to newer (higher tier) pollutant emission standards. This must be verified prior to payment or reimbursement.

14.4 *Payment to LPA:* Payment or reimbursement to the LPA shall be submitted to:

LPA Name
LPA Address
Columbus, OH 00000

14.5 *Audit Requirements:* The LPA shall comply with the audit requirements of 2 CFR 200 Subpart F - Audit Requirements.

14.6 *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 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 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.

14.7 *Ohio Ethics Laws:* LPA agrees that 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 Ohio Revised Code.

14.8 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a

controlled substance while working on state property.

- 14.9 *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.
- 14.10 *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.
- 14.11 *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. This Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 14.12 *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.
- 14.13 *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.

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

LPA:
LPA Name

By: _____
LPA Contact, Title

Date: _____

**STATE OF OHIO,
DEPARTMENT OF
TRANSPORTATION**

By: _____
Jerry Wray, Director

Date: _____

COMPANY

By: _____
LPA Contact, Title

Date: _____

Attachment 1

DIRECT PAYMENT OF CONTRACTOR

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA’s contractor shall be paid directly to the Vendor in the prorata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this agreement, and shall indicate that the payment is to be made to the vendor. In addition, the invoice must state the Vendor’s name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

We the LPA Name request that all payments for the Federal/State share of the equipment costs of this agreement performed by Company Name be paid directly to Company Name

VENDOR Name:
Oaks Vendor ID: 0000000000
Mailing Address:

LPA signature: _____

LPA Name: LPA Name
Oaks Vendor ID: 0000000000
Mailing Address: LPA Address
Columbus, OH 00000

Approved, ODOT signature