

**AGREEMENT
BETWEEN
CITY OF HUDSON, OHIO
AND
THE OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION
FOR REPLACEMENT AND DECK WIDENING OF PROSPECT ROADBRIDGE
MILEPOST 182.1**

THIS AGREEMENT (“**Agreement**”) is made as of the last date signed below (the “**Effective Date**”) by and between by and between City of Hudson, a body corporate and politic and a political subdivision of the State of Ohio with its principal place of business located at 1140 Terex Road, Hudson, Ohio 44236 (hereinafter referred to as the “**CITY**”), and the Ohio Turnpike and Infrastructure Commission, a body corporate and politic in the State of Ohio, with its principal place of business located at 682 Prospect Street, Berea, Ohio 44017 (hereinafter the “**COMMISSION**”), through their duly authorized representatives. The CITY and the COMMISSION shall be referenced herein individually as a “Party” and collectively as “Parties.”

RECITALS:

WHEREAS, the COMMISSION is undertaking the engineering design and construction to replace the bridge deck of the Prospect Road Bridge located at Milepost 182.1 over the Ohio Turnpike (the “**Project**”); and

WHEREAS, the CITY has requested the COMMISSION to undertake the engineering and design of a multi-purpose trail to be located on the Prospect Road Bridge (“**Bridge Widening Project**”); and

WHEREAS, the CITY desires to retain the COMMISSION to perform the construction of the Bridge Widening Project thereby avoiding coordination issues and potential delays, and to provide shared costs savings which will result in less disruption to the public; and

WHEREAS, in consideration for the COMMISSION providing the construction of the Bridge Widening Project; the CITY agrees to pay the COMMISSION for all actual costs and expenses incurred by COMMISSION in connection with the design, bidding, insuring, construction, construction administration, inspection and installation of the multi-purpose trail to be located on the Project.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY and the COMMISSION agree as follows:

I. ENGINEERING SERVICES

A. The COMMISSION shall provide the necessary personnel for the preparation of construction plans and specifications for the Project and the Bridge Widening Project (together, the “**Projects**”) in accordance with the Special Provisions of the Ohio Turnpike, Ohio Turnpike Standard Construction Drawings, and the Ohio Department of Transportation Construction and Material Specifications (the “**Project Plans**”).

II. RIGHT-OF-WAY ACQUISITION

A. In the event any additional right-of-way is required for the Bridge Widening Project related to the multi-purpose trail, the CITY will arrange for the acquisition of such right-of-way at its sole cost.

B. In the event any additional right-of-way is required for the Project that is not related to the multi-purpose trail, the COMMISSION will arrange for the acquisition of such right-of-way at its sole cost.

III. CONSTRUCTION

A. The COMMISSION shall provide the necessary contractors, personnel, facilities, materials, and equipment to construct the Projects, regarding scope, form, content, cost and method of presentation and in accordance with the Project Plans. The COMMISSION shall also provide construction administration, supervision and inspection services necessary for the Projects through final completion of the construction.

B. The COMMISSION shall be responsible for acquiring any and all permits, easements and rights of entry necessary for the construction and inspection of the Projects within the COMMISSION'S Right of Way.

C. The CITY shall be responsible for acquiring any and all permits, easements and rights of entry necessary for the construction and inspection of the Bridge Widening Project that is not located within the limits of the Commission's Right of Way.

D. The COMMISSION shall award the construction contract relating to the Projects on a competitive basis to a qualified general contractor on a "lowest responsive and responsible bidder" basis (the "Contractor") relative to the total cost of the combined Projects. The COMMISSION will cause the Contractor to bid separate line-items for the Project Costs related to the widening of the bridge to accommodate the multi-purpose trail (defined below).

E. During the construction of the Projects, the COMMISSION shall provide all reasonable information requested by the CITY, and allow access to the Bridge Widening Project by CITY personnel provided such access does not interfere with the Project. Additionally, the COMMISSION shall provide advanced reasonable notice to the CITY of any meetings held relative to the Projects with contractors, consultants, materialmen, state employees or agencies prior to and during the Projects.

F. During the construction of the Projects, the COMMISSION shall submit to the CITY monthly progress reports until the closeout of the Projects. The format of the report shall be provided by the CITY which shall generally summarize the project schedule, percentage complete of project components, actual expenditure of the Bridge Widening Project Costs related to the widening of the bridge to accommodate the multi-purpose trail (defined below) to date, and a summary of any complications, delay, change orders, or deviations from the original scope.

G. Prior to acceptance of the Bridge Widening Project, the COMMISSION shall submit as-built plans to the CITY within a reasonable time frame after receiving the said as-built drawings.

H. Upon completion of the Bridge Widening Project, including successful resolution of all final punch list items, and review of as-built drawings, the CITY shall inspect and review the work and documents and shall either approve of the completed work by accepting the final report of the COMMISSION or provide written notice to the COMMISSION of the reasons for rejection of the completed work. Upon approval of the completed work, the CITY agrees to accept the Bridge Widening Project and thereafter be fully responsible for all maintenance, repair, replacement, use, performance and operation thereof.

IV. UTILITIES

A. The CITY shall make arrangements with and obtain agreements from privately owned public utility companies whose lines or structures will be affected by the Bridge Widening Project, and said companies have agreed to make any and all necessary arrangements in such a manner as to be clear of any construction called for by the plans of said improvement, and said companies have agreed to make such necessary arrangements immediately after notification by the CITY.

B. That the COMMISSION will make arrangements with and obtain agreements from privately owned public utility companies whose lines or structures will be affected by the Project, and said companies have agreed to make any and all necessary arrangements in such a manner as to be clear of any construction called for by the plans of said improvement, and said companies have agreed to make such necessary arrangements immediately after notification by said COMMISSION.

C. Within their respective Projects and Projects' limits, the CITY and the COMMISSION will participate in the cost of alterations of governmentally-owned utility facilities which come within the provisions of Section 8301 (Utility Reimbursement Eligibility) of the Ohio Department of Transportation's Real Estate Policies and Procedures Manual to the same extent that it participates in the other costs of the project, provided, however, that such participation will not extend to any additions or betterments of existing facilities, and that the Commission will not apply for or receive any reimbursement of utility relocation costs pursuant to 23 CFR 645 Sub-Part "A" or that otherwise are comprised of federal dollars, except when in compliance with Revised Code 5537.04(A)(13).

V. PROJECT COSTS RELATED TO BRIDGE WIDENING

A. The CITY agrees to provide funding, as described herein, to the COMMISSION for actual costs and expenses relating to the construction, construction supervision, administration, and inspection of the Project, including, but not limited to, costs and expenses of contractors, subcontractors, and costs incurred as a result of events or causes beyond the reasonable control of the COMMISSION (collectively, "**Bridge Widening Project Costs**").

B. The COMMISSION will bid the Project on an itemized unit price basis. All work related to the Bridge Widening Project will be expressly separated from the Project costs. Prior to

commencement of construction of the Project, the COMMISSION shall provide an invoice of the bid Bridge Widening Project Costs and the CITY shall, within forty-five (45) calendar days of receipt of the invoice, exclusive of the construction administration and inspection costs described below, pay the COMMISSION such sum as long as the invoice of listed costs/expenses has been approved by the CITY.

C. The COMMISSION will be responsible for making all payments to the Contractor in adherence with the requirements of the Project. No approval is needed from the CITY in order for the COMMISSION to make payment to the Contractor.

D. The CITY shall provide approval in writing prior to the COMMISSION approving a change order in excess of \$20,000 or 5% of the widening portion of the Project, whichever is less, including but not limited to orders for changes in bid item quantities and compensation for changes in work site conditions. CITY shall provide its approval, or disapproval, in writing with five (5) business days of after receiving a request for approval of a change order submitted pursuant to this paragraph, or sooner if conditions reasonably require a more rapid approval of the change order. The change order shall be deemed approved by the CITY if a response is not provided to the COMMISSION within fourteen (14) business days.

E. In addition to the costs described in paragraphs (A), (B) and (D) above, upon completion of the construction of the Project, the CITY shall pay for the proportional share of items that are coincident to Project, including but not limited to construction inspection, administration and supervision, material testing, field office, maintenance of traffic, project-wide video recording, which cost shall be proportionally divided based on the actual overall construction cost relative to the Project.

F. Within ninety (90) calendar days after substantial completion of Project, the COMMISSION shall determine the actual Bridge Widening Project Costs and shall either: 1) invoice the CITY for any deficit in the amount paid in advance; or 2) notify the CITY of the amount of any overpayment based on its calculations. Such payment or credit resulting reconciliation shall be made within forty-five (45) calendar days of the determination.

G. Should the CITY determine that the Bride Widening Project is no longer feasible, the CITY may terminate this agreement with thirty (30) days' notice in writing to the COMMISSION. The CITY shall pay COMMISSION the amounts described in this Section V incurred through the date of termination, which the COMMISSION shall invoice the CITY, if needed.

The COMMISSION's design consultant has prepared a proposal related to the Project. The design consultant has broken out costs associated with the Bridge Widening Project Costs, a copy of which is attached hereto as Exhibit A. These costs are the responsibility of the CITY. The parties hereto agree that these costs are for the design stage of the Project only, and that additional costs pursuant to paragraph (E) herein will be identified later, and will be shared with by the COMMISSION with the CITY.

H. The Commission requested a Physical Condition Report, which contains in relevant part the CITY's share of the Construction Estimate, a copy of which is attached hereto as Exhibit B. The parties hereto agree that these are estimated costs for construction of the project, and that due to market trends and other variables, the actual costs of construction may vary greatly from estimates to final bids.

VI. MAINTENANCE AND ANNUAL INSPECTION

Upon completion of the Projects, the parties agree as follows:

A. The COMMISSION will maintain the Project in accordance with the provisions of the statutes relating thereto and make ample financial provisions for such maintenance; and

B. The CITY will maintain the Bridge Widening Project, including but not limited to the removal of snow, debris, etc. on Prospect Road and the multi-purpose trail, in accordance with the provisions of the statutes relating thereto and make ample financial provisions for such maintenance.

VII. MISCELLANEOUS

A. Notices. Any notice, consent or other communication under this Agreement shall be in writing and shall be considered given when delivered in person or sent by electronic mail (provided that any notice sent by electronic mail shall simultaneously be sent via personal delivery, overnight courier or certified mail as provided herein), one (1) Business Day after being sent by a reputable overnight courier, or three (3) Business Days after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a party may specify by notice given pursuant to this Paragraph to the other Party hereto). As used herein, "Business Day" means any day that is not a Saturday, Sunday or holiday observed by the CITY. Notice given pursuant to this Paragraph shall be addressed as follows:

(a) To the Commission:

Chief Engineer
682 Prospect Street
Berea, Ohio 44017
chris.matta@ohioturnpike.org

Copies to: General Counsel
682 Prospect Street
Berea, Ohio 44017
Jennifer.Rieker@ohioturnpike.org

(b) To CITY:

City Engineer
City of Hudson Engineering Dept.
1140 Terex Road

Hudson, OH 44236
bkosco@hudson.oh.us

Copies to: City Solicitor
1140 Terex Road
Hudson, OH 44236

B. Amendment. This Agreement may only be amended or modified by a writing executed by the CITY and the COMMISSION.

C. Counterparts. This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, and all of which shall together constitute one and that same document, and shall be binding on the signatories; and the signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. In the event that any signature is delivered by facsimile transmission, by email delivery of a “.pdf” format data file, or by uploading of a “.pdf” format data file on the CITY’s website, such signatures shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

D. Audit. CITY shall have the right, during the period which the subject records are required to be maintained by the COMMISSION, to audit any of the COMMISSION’s records related to the capital improvements performed related to this Agreement, including financial and technical documentation.

E. Waiver of Consequential Damages. In no event shall the CITY and the COMMISSION, their associated entities, consultants, contractors, or any of their respective members, directors, officers, officials or employees be liable to the other, or anyone claiming by, through or under them, for any special, incidental, indirect or consequential damages whatsoever arising out of, resulting from or in any way related to this Agreement, including loss of use or loss of profits incurred by the other party or their associated entities, successors, assigns, or customers.

F. Further Assurances. Subject to the express terms and conditions of this Agreement, each party shall take such actions and provide to the other such assurances as may be reasonably requested to consummate the transactions contemplated hereby, including providing such further documents or instruments reasonably requested by the other party as may be reasonably necessary to effect the purpose of this Agreement and carry out its provisions. The provisions of this Paragraph shall not operate to expand or enlarge the specific obligations of either the CITY or the COMMISSION expressly set forth in this Agreement.

G. No Apparent Authority/Proper Approvals. This Agreement has been properly authorized pursuant to the required provisions of any and all charter provisions, ordinances, resolutions and regulations of the Parties. The individuals signing on behalf of the Parties to this Agreement are authorized to execute this Agreement on behalf of the CITY and the COMMISSION. The Parties recognizes and agrees that no public official or employee of either Party may be deemed to have apparent authority to bind that Party to any contractual obligations

not properly authorized pursuant to charter provisions, ordinances, resolutions, and regulations of the Parties.

H. Governing law and jurisdiction. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The Parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Agreement, and each party consents to the exclusive jurisdiction of such courts. The Parties hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason.

I. Entire Agreement. This Agreement and any exhibits referred to herein, all of which are attached hereto and made a part hereof, embody and constitute the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, by and between the CITY and the COMMISSION, are superseded and merged into this instrument, and shall be null, void and of no further force and effect from and after the Effective Date.

J. Severability. If any provision of this Agreement is invalid or unenforceable for any reason, this Agreement shall be divisible as to such provision and the remainder of this Agreement shall be and remain valid and binding as though such provision was not included.

K. Survival of Terms. Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement which (i) the Parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

L. Non-Waiver. No delay or omission by either Party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such change, waiver, or discharge is sought to be enforced.

M. Interpretation. The Parties acknowledge that this Agreement was jointly drafted by the Parties; and thus, all terms and conditions shall not be construed against either Party should an ambiguity be raised or found to exist within the Agreement.

N. Finding for recovery. Each of the Parties represents and warrants that it is not subject to an “unresolved” finding for recovery under Ohio Revised Code Section 9.24.

O. Disclaimer of Joint Venture. This Agreement is not intended to create a joint venture, partnership or agency relationship between the CITY and the COMMISSION, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

P. Electronic signature. By entering into this Agreement, the COMMISSION, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring CITY signatures may be executed by electronic means, and that the electronic signatures affixed by CITY to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

CITY OF HUDSON, OHIO:

By: _____
Thomas J. Sheridan
City Manager

Approved as to legal form by:
Sara Fagnilli, ESQ.
City Prosecutor

By: _____

Date: _____

**OHIO TURNPIKE AND
INFRASTRUCTURE COMMISSION:**

By: _____
Ferzan M. Ahmed, P.E.
Executive Director

Approved as to legal form by:
Jennifer Monty Rieker, Esq.
General Counsel

By: _____

Date: _____

Exhibit A

Mr. Daniel Rodriguez, PE

October 30, 2023

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COMPENSATION

Compensation for services rendered will be as indicated below and included in the attached man-hour justification. As requested, we have shown the costs separately for tasks to be paid by the City of Hudson.

Geotechnical Investigations/Analysis (OTIC) \$74,805
Geotechnical Investigations/Analysis (City of Hudson) \$46,848

Survey & Basemapping (OTIC) \$9,548
Survey & Basemapping (City of Hudson) \$9,742

Design/Plan Preparation
MP 182.1 – Prospect Road over Mainline OTIC (City of Hudson) \$72,441
All Other \$515,895

Submittals \$22,039
Bid Phase Services \$16,151
Project Direction and Administration \$24,913

Total Fee \$792,382

If Authorized Tasks:

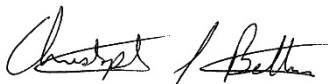
MP 180.3 - Traffic Count & Queue Analysis \$1,676
MP 183.2 – Fatigue Life Analysis \$2,385

If Authorized Total Fee \$4,061

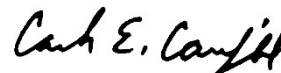
Daniel, thank you again for your confidence in our abilities at American Structurepoint. Our experienced and talented staff are ready to assist you through all phases of this project.

If you have any questions or concerns regarding this proposal, please feel free to contact me at cбетtinger@structurepoint.com or 614-901-2235.

Very truly yours,
American Structurepoint, Inc.



Chris Bettinger, PE
Project Manager



Cash E. Canfield, PE
Chief Operating Officer

CLB:aml

Attachments

7.0 ESTIMATED COST

Per the revised Phase 1A scope under Modification 1, estimated construction costs are provided for the rehabilitation of the Prospect Road Bridge (MP 182.1) and the additional costs incurred by providing a multi-use path crossing the Ohio Turnpike as outlined in Section 5.0 for each alternative. The structures, roadway and total estimated costs for the three alternatives are summarized in Table 5 and are provided in Appendix B.

With the current inflationary environment we have used a factor of 15% for inflation to 2024 construction based on recent trends in similar ODOT projects as OTIC has not let a significant number of similar project to date in the current inflationary environment to accurately gage its impacts on pricing. In addition due to the preliminary nature of or analysis a 20% contingency was included in the project costs.

Table 5 - Estimated Construction Cost				
	MP182.1 Rehabilitation Cost	Additional Multi-Use Path Cost	Additional Design Costs Beyond Alternative 1	Total Project Cost
Alternative 1	2,247,000			
Alternative 2	\$2,247,000	\$1,890,000	\$190,000	\$4,327,000
Alternative 3	\$2,247,000	\$1,541,000	\$217,000	\$4,005,000

8.0 RECOMMENDED REHABILITATION ALTERNATIVE

With the assumption that bike and pedestrian access will be provided Compass recommends Alternative 3. This alternative is the lowest total project cost as shown in section 7.0. In addition, it provides a structurally redundant option over the Ohio Turnpike mainline compared to the non-redundant fracture critical pedestrian truss. It also minimizes the number of structures required to be inspected and maintained by the OTIC and or by local agencies by agreement. Alternative 3 also minimizes project footprint and associated environmental impacts.