Rev. 4/16/09

 MED **– CR 0019 – 03.95**

 COUNTY-ROUTE-SECTION

 82708

 pid number

 **15118**

 agreement number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 county – route – section

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**CFDA 20.205**

**Amendment dated 04/28/09 to Agreement No. 15118**

This Amendment is prepared to revise the maximum construction cost eligible for Federal participation

to $721,875.00 of ARRA (S267) Stimulus Funds and to include ARRA funding language, as approved

by the Program Manager.

1. PURPOSE

1.5 This PROJECT is funded by the American Recovery and Reinvestment Act of 2009 (“ARRA”), and subject to the specific reporting and operational requirements of that law.

2. LEGAL REFERENCES

2.1 This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:

1. Section 5501.03(C) of the Ohio Revised Code;
2. ODOT Policy No. 25-001(P), Development Process Policy for Locally-Administered Transportation Projects;
3. ODOT Locally Administered Transportation Projects, Manual of Procedures;
4. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105;
5. ARRA, Public Law 111-5; and
6. Audit Requirements of 49 CFR 18 and 2 CFR 225.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be **$557,210.50** as set forth in Attachment 1.

 ODOT shall provide to the LPA 100% of the eligible costs up to a maximum amount of **$721,875.00** in federal ARRA funds (the “ARRA Maximum Amount”) not to exceed the original low and best bid contract amount plus up to 10% for Construction Engineering.

3.2 The LPA shall provide **all other** financial resources necessary to fully complete the project in excess of the ARRA Maximum Amount including but not limited to all cost overruns, contractor claims, Preliminary Engineering, Right of Way, and Construction Engineering beyond the 10% referenced in 3.1 above.

3.3 Any ARRA funds that remain after project award shall revert back to the Department. All requests for reimbursement of funds allocated under the ARRA must be submitted within six months of the close of the project, but in no event shall the request for reimbursement be submitted to ODOT later than August 31, 2015.

4. PROJECT DEVELOPMENT AND DESIGN

4.7 The LPA acknowledges that it must file its Plans, Estimate and Specifications package, inclusive of ODOT District review and approval, to the Office of Local projects on or before May 22, 2009.

8. CONSTRUCTION CONTRACT ADMINISTRATION

8.3 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 reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with 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.

10. NONDISCRIMINATION

10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the “LPA”) agrees as follows:

(1) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter “U.S. DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this contract.

 In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as “ADA/504”).

(2) **Nondiscrimination:** The LPA will not discriminate either directly or indirectly on the grounds of race, color, national origin, sex, or disability as prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(3) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration (hereinafter “FHWA”) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(4) **Sanctions for Noncompliance:** In the event of the LPA’s noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

 (a) withholding of payments to the LPA under the contract until the LPA complies, and/or

 (b) cancellation, termination or suspension of the contract, in whole or in part.

10.5 The LPA must further comply with the reporting and operational requirements of ARRA as reflected in section 16 below.

15. GENERAL PROVISIONS

15.1 *Audit Requirements*: The LPA is responsible for compliance with 49 CFR 18, *Uniform Administrative Requirements for Grant and Cooperative Agreements to State and Local Governments* and 2 CFR 225, *Cost Principles for State, Local and Indian Tribal Governments.* These federal regulations establish minimally acceptable requirements for financial accounting systems, cost standards, and reporting that must be maintained in order to administer a federally-funded project. The LPA shall further comply with all the audit and operational requirements of ARRA as specified in Section 16 below.

16. COMPLIANCE WITH ARRA

16.1 *LPA Reporting Requirements:* The LPA shall complete a form FHWA-1589 for each month from the date of the Notice to Proceed until completion of the contract or September, 2012 whichever occurs sooner. Copies of form FHWA-1589 and instructions can be accessed via the Departments website at the following web address:

 <http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The LPA shall report the direct, on-the-project jobs for their workforce active during the reporting month. These job data include employees actively engaged in projects who work on the jobsite, in the project office, in the home office or telework from a home or other alternative office location. This also includes any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA funded project.

The LPA shall submit the completed form FHWA-1589 by the 10th of each month for the previous month’s employment information to the project engineer **AND** submit the completed information online at the following address:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The initial report shall be submitted to the Project Engineer within 30 days of execution. Subsequent reports shall be submitted to the Project Engineer no later than 10 days after each report month.

16.2*. LPA Contractor Reporting Requirements:*

The LPA shall require its prime Contractor complete a form FHWA-1589 for each month from the date of the Notice to Proceed until completion of the contract or September, 2012 whichever occurs sooner. The LPA shall be responsible to make certain its prime Contractor reports their firm **as well as every Subcontractors** **data for every tier of Subcontractor**. Copies of form FHWA-1589 and instructions can be accessed via the Departments website at the following web address:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The LPA shall require its prime Contractor to report the direct, on-the-project jobs for their workforce and the workforce of their Subcontractors active during the reporting month. These job data include employees actively engaged in projects who work on the jobsite, in the project office, in the home office or telework from a home or other alternative office location. This also includes any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA funded project. This does not include material suppliers.

The LPA shall require its prime Contractor to submit the completed form FHWA-1589 by the 10th of each month for the previous month’s employment information to the project engineer **AND** submit the completed information online at the following address:

<http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

The initial report shall be submitted to the Project Engineer within 30 days of execution. Subsequent reports shall be submitted to the Project Engineer no later than 10 days after each report month.

In addition, the Contractor certification requirements of 109.09 will include an attestation to the Contractors submission of these required forms.

16.3 *Accessibility to Records and Project Sites:*

a. Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

 (1) Examine any records of the Contractor or any of its Subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

 (2) Interview any officer or employee of the Contractor or any of its Subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

b. The Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

c. Section 1515(a) of the American Recovery and Reinvestment Act (ARRA) of 2009 (ARRA) provides authority for any representatives of an inspector general to examine any records or interview any employee or officers working on this contract. The Contractor is advised that representatives of the inspector general have the authority to examine any record and interview any employee or officer of the Contractor, its Subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

d. Sections b. and c. above shall be included **verbatim** in all of the LPA’s agreements with its Contractors, its Contractor’s agreements with its Subcontractors from whom the Contractor acquires goods or services in its execution of the ARRA funded Work.

16.4 *Collection of DUNS Numbers:*

The LPA shall require its Contractor to submit its unique nine-digit number issued by Dun & Bradstreet followed by the optional digit DUNS Plus number (reported for example as “999999999.9999”) along with its signed and executed contract in accordance with Section 103 of the Construction and Material Specifications.

16.5 *Additional Notice Requirements Regarding Affirmative Action to Ensure Equal Employment Opportunity.*

 a. The LPA’s attention is called to the affirmative action obligations required by the specifications set forth in 23 CFR Part 230, 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974.

Utilization goals applicable to the project, expressed in percentages, for minority and female participation for each construction craft can be found on ODOT’s website at <http://www.dot.state.oh.us/contract/census.htm>. These goals are based on 2000 census data and represent the area, per craft, minority and female availability pool.

Minority and female utilization obligations by craft per county (applicable to project):

<http://www.dot.state.oh.us/CONTRACT/Census/CountyAvailablity-ByTrade.pdf>

The LPA, its Contractor and each subcontractor are required to complete the Employment Utilization Reporting of Work Hour Data tracking report CR-6. This form can be found on ODOT’s website at:

 <http://www.dot.state.oh.us/divisions/communications/pages/FederalStimulusProjects.aspx>

This report will be required on a **MONTHLY** basis for the duration of the Project. The “month” will begin at the start of the actual work on the Project. The Department requires that report CR-6 be completed identifying the hours worked per craft and the number of employees per craft for this Project. Each subcontractor will forward the completed report CR-6 to the Contractor, who in turn will be responsible for forwarding a compiled report for its entire work force and that of all subcontractors to the LPA who shall forward the report to ODOT. The consolidated reports shall include all craft hours and total numbers of employees for all construction work originated by the Contractor for this project.

Within thirty (30) days of the Pre-Construction Conference for this Project, the LPA and its Contractor shall identify to ODOT the estimated TOTAL hours to be worked by each trade and by race and gender on this project. Please submit this information to:

 Ohio Department of Transportation

 1980 West Broad Street

 Attn: Office of Civil Rights

 Columbus, Ohio 43223

 b. The LPA and its Contractor is required to appoint an EEO/Affirmative Action (EEO/AA) Manager for the Project. The EEO/AA Manager shall have overall responsibility for the monitoring of EEO/AA compliance by the LPA and its Contractor and by all subcontractors working on this project. The above requirements do not have separate pay items. All costs associated with these requirements shall be bid as part of the Contractor’s general administration or overhead costs for this project.

c. For the ARRA projects, the Department will set a Statewide goal for the number of OJT participants. This shall be a goal for each LPA and its Contractor to aspire to meet.

16.6 *Misc:* If LPA, its Contractor or any Subcontractor fails to comply with any of the provisions contained in this section, the Department may terminate this contract, pursue debarment of the Contractor or Subcontractor and/or withhold or suspend pay estimates after written notice and a reasonable opportunity to comply has been provided.

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

**LPA**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **STATE OF OHIO**

 **OHIO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Jolene M. Molitoris

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Director

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Attachment 1**

**PROJECT BUDGET – SOURCES AND USES OF FUNDS**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  SOURCESUSES |  | LPA FUNDS | FHWA FUNDS | STATE FUNDS |  |  TOTAL |
|  |  | Amount | % | SAC | Amount | % | SAC | Amount | % | SAC |  |  |
| PRELIMINARY DEVELOPMENT  |  |  | 100 | LNTP | N/A |  |  | N/A |  |  |  |  |
| FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS |  |  | 100 | LNTP | N/A |  |  | N/A |  |  |  |  |
| ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION |  |  | 100 | LNTP | N/A |  |  | N/A |  |  |  |  |
| PROJECT CONSTRUCTION COSTS |  |  |  |  | $506,555.00 | 100 | S267 | N/A |  |  |  | $506,555.00 |
|  INSPECTION |  |  |  |  | $50,655.50 | 100 | S267 | N/A |  |  |  | $50,655.50 |
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| TOTALS |  |  |  |  | $557,210.50 |  |  |  |  |  |  | $557,210.50 |

**Attachment 2**

 MED **– TR 0019 – 03.95**

 COUNTY-ROUTE-SECTION

 82708

 pid number

 **15118**

 agreement number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 county – route – section

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 **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 contractor 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 contractor. In addition, the invoice must state the contractor’s name, mailing address and Federal tax 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 (*INSERT NAME OF LPA*) request that all payments for the Federal/State share of the construction costs of this agreement performed by (*CONTRACTOR’S NAME*) \_\_\_\_\_ be paid directly to (*CONTRACTOR’S NAME*) .

Contractor Name:

Oaks Vendor ID:

Mailing Address:

LPA signature

LPA Name:

Oaks Vendor ID:

Mailing Address:

Approved, ODOT signature