Agreement between the
State of Ohio, Ohio Department of Transportation
and
___________________, Franklin County, Ohio
to Furnish Acoustic Insulation

Whereas, This agreement is entered into pursuant to 23 CFR 772.13.

Whereas, 23 CFR 772.13 was promulgated pursuant to 23 USC 109. 23 USC 302 authorizes the Ohio Department of Transportation to administer the standards found at 23 USC 109(h) and its implementing regulations on behalf of the United States Department of Transportation.

Whereas, the State of Ohio, Ohio Department of Transportation (hereinafter referred to as “ODOT”) has determined that traffic noise impacts are predicted to occur at the ___________ due to the County/Route/Section; PID _____; project to ______________________________,

Whereas, the ______________ is a FHWA Activity Category D and is eligible for acoustic insulation instead of noise mitigation by noise barrier as specified in 23 Code of Federal Regulations Part 772.13(c)(6), and

Whereas, in general, the window and door openings are the weakest components in a structure’s external façade allowing noise to infiltrate the building, and

Whereas, in 1999, the National Cooperative of Highway Research Programs (NCHRP) published NCHRP Synthesis 218, Mitigation of Nighttime Construction Noise, Vibrations, and other Nuisances, and the NCHRP study concluded that a treated window system capable of meeting a Sound Transmission Class (STC) of 39 or greater could provide an incremental 10 decibel sound reduction in a building, and

Whereas, a noise barrier constructed within the existing County/Route highway right-of-way would reduce exterior traffic noise levels at the ___________, but a noise barrier has been found not feasible and not reasonable, and

Whereas, any (description of work completed) would only reduce interior traffic noise levels and the exterior traffic noise levels would be unchanged, and

Whereas, the acoustic insulation noise abatement measure will negate any future exterior traffic noise abatement by ODOT at the ________________ as a result of the County/Route/Section; PID _____; project, now

Therefore, the ODOT and the ________________ agree as follows:
1. ODOT agrees to fund the (description of work completed) at the __________________ to fulfill the highway traffic noise mitigation requirements for the project, in part, as stated in the approved environmental document in accordance with the following stipulations:

2. ODOT shall only expend funds for (description of work completed) along the sides of the ______________ building that are affected by ______________ traffic noise as identified on Attachment 1 to this Agreement.

3. ODOT shall expend up to a maximum of $________, for (description of work completed) performed at the ______________ building as depicted on Attachment 1.

4. The ______________ and their contractor are responsible for obtaining any required building permits, licenses and meeting any other requirements to perform the work covered under this agreement, including testing, sealing or removal and disposal of asbestos-containing materials or other hazardous or toxic substances.

5. For properties on or eligible for inclusion on the National Register of Historic Places, the ______________ shall abide by all applicable requirements of any Memorandum of Agreement with the State Historic Preservation Officer, Advisory Council on Historic Preservation and other signatories, pursuant to the National Historic Preservation Act.

6. The door replacement system shall meet a Sound Transmission Class (STC) of 39 or greater. Acoustical drape shall meet a STC of 26 or greater.

7. The (description of work completed) shall be performed by the ______________ or under a contract with the ______________.

8. The ______________ shall select the company/contractor to supply and install the (description of work completed), and other improvements under the same contract, if desired, and thereby hold all warrantees and guarantees for the work, (description of work completed) and associated materials.

9. The ______________ shall submit invoice(s) for reimbursement of the (description of work completed) at the ______________ building, as stipulated in this Agreement, to ODOT on a periodic basis during this contractual work, as determined appropriate by the ______________, however not to exceed six (6) invoices.

10. ODOT shall reimburse ______________ for the door replacement/acoustical drape installation invoice(s) received for the ______________ building as stipulated in this Agreement.

11. A receipt for the door replacements/acoustical drape installation shall be submitted by the ______________ to ODOT as documentation for completion of the reimbursement transaction.

12. Within 15 working days upon receipt of the final window/door replacement invoice from the ______________, ODOT shall inspect the ______________ building to
ensure that the acoustic insulation along the eligible sides of the _________________ building is complete prior to reimbursement of the final (description of work completed) invoice to the __________________ as stipulated in this Agreement.

13. 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 _________________ 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.

14. _________________ has three months after the completion of the project to submit a final invoice to ODOT. No invoices shall be accepted or paid by ODOT after the 3 month date.

15. In the event of any refund from the company/contractor for the window/door replacements, _________________ shall, in turn, refund to ODOT the money that has been paid by ODOT.

16. It is expressly understood by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party on and after ___________, 20__, until all statutory provisions under the Ohio Revised Code, including but not limited to Section 126.07, have been complied with and until such time as all necessary funds are made available and forthcoming from the General Assembly or, in the event that federal funds are used, until such time that ODOT gives the ________________ written notice that such funds have been made available to ODOT, by ODOT’s funding source.

17. _________________, with the intention of binding itself and its successors in interest and assigns, does hereby release, hold harmless from any liability, and forever discharge ODOT, and their agents, servants, employees, and officers, personally and in any other capacity, from all claims, actions, causes of actions, demands costs, loss of services, expenses and any and all other damages which the undersigned ever had, now has, may have, or claim to have, against ODOT, or their agents, servants, employees, or officers, on account of or in any way arising out of the installation of the acoustic insulation and other matters related to the noise from _________________ impacting __________________.

18. In the event a dispute arises regarding any payment terms and conditions contained in this Agreement, notification of such dispute shall be sent to the contact for the Ohio Department of Transportation and the contact for the _________________, in writing, within thirty (30) days of discovery of such dispute. In such notification, the disputing party shall present such evidence as may support its position. Within a reasonable time, the Director of Transportation and a designated representative of the _________________ shall review the facts and circumstances surrounding the dispute for the purpose of determination. Said dispute shall be resolved within a reasonable period of time.
19. This Agreement constitutes the entire and integrated agreement between the parties. Any change to the provisions of this Agreement shall be made by written amendment executed by all of the parties.

20. Neither this Agreement nor any rights, duties, or obligations described in it may be assigned by a party without the prior express written consent of the other party.

21. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or joint venture.

22. This Agreement will be construed and interpreted and the rights of the parties determined under the laws of the State of Ohio.

23. Any person executing this Agreement in a representative capacity warrants that he or she has been duly authorized by his or her party to execute this Agreement on such party's behalf.

24. All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon receipt thereof, and shall be sent to the addresses below:

For ________________:
Name:
Title:
Address:
City, State ZIP Code:
Phone:
e-mail:

For ODOT:
Name:
District Environmental Coordinator:
Address:
City, State ZIP Code:
Phone:
e-mail:

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the last date written below:

_________  Ohio Department of Transportation

Name       Date       Date
Title:     ______________