



RESOLUTION 2023- 40

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A NETWORK ACCESS AGREEMENT WITH THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND DELAWARE COUNTY AUTOMATIC DATA PROCESSING BOARD FOR IT NETWORK ACCESS TO THE CENTRAL TRAFFIC SIGNAL SYSTEM (CTSS).

WHEREAS, The City of Powell entered into an intergovernmental agreement with Delaware County in 2021 (ORD 2021-02) for the inclusion of the City of Powell traffic Signals on Sawmill Parkway into the regionalized traffic signal system (CTSS).; and

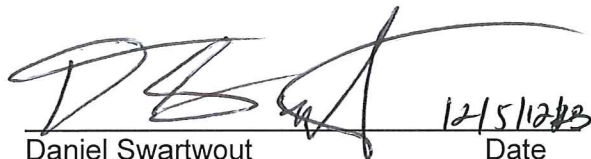
WHEREAS, In order to utilize the CTSS System, Delaware County and the City of Powell need to execute a Network Access Agreement that provides the City of Powell access to the Delaware County IT Network. The Network Access Agreement allows us to fully utilize the services contemplated in the original agreement; and

NOW THEREFORE BE IT RESOLVED BY THE CITY OF POWELL, COUNTY OF DELAWARE, STATE OF OHIO, AS FOLLOWS:

Section 1: That the City Manager is hereby authorized and directed to enter into a network access agreement with the Delaware County Board of Commissioners and Delaware County Automatic Data Processing Board for IT network access to the Central Traffic Signal System (CTSS).

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of Council and that all deliberations of Council and any of the decision-making bodies of the City of Powell, which resulted in such formal actions, were in meetings open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.

Section 3: This Resolution shall be in full force and effect immediately upon adoption.



Daniel Swartwout
Mayor

12/5/2023

Date

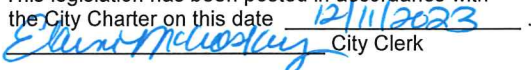


Elaine McCloskey
City Clerk

12/5/2023

Date

EFFECTIVE DATE: December 5, 2023

This legislation has been posted in accordance with the City Charter on this date 12/11/2023


City Clerk

NETWORK ACCESS AGREEMENT

THIS NETWORK ACCESS AGREEMENT (the “**Agreement**”) is made and entered into as of _____, by and between the **Delaware County Board of Commissioners**, 91 North Sandusky Street, Delaware, Ohio 43015 and the **Delaware County Automatic Data Processing Board**, 145 North Union Street, Delaware, Ohio 43015 (collectively, the “**County**”), and *Name of Partner Agency*, *Partner Agency Address* (the “**User**”), (hereinafter individually referred to as a “**Party**” and collectively referred to as the “**Parties**”).

RECITALS

WHEREAS, the County owns and operates an information technology network system (the “**System**”); and

WHEREAS, the User works cooperatively with the County or another Delaware County office to conduct certain governmental functions that involve use of or access to the System; and

WHEREAS, subject to the terms and conditions set forth below, the County desires to provide the User with access to the System;

NOW, THEREFORE, in consideration of the foregoing, and of the promises and covenants contained in this Agreement, the Parties agree as follows:

1. **System Access.** The County hereby grants to User the right to access the System. The User’s access to the System shall be subject to all procedures and requirements as the County’s Chief Technology Officer may determine.
2. **Term; Termination.** The term of this Agreement shall commence as of the date first written above and shall continue in full force and effect until terminated in accordance with this Agreement. Either Party may, upon providing written notice to the other Party, terminate this Agreement with or without cause.
3. **Consideration.** The Parties mutually acknowledge and agree that the purpose of this Agreement furthers the interests of public safety and general welfare through interagency coordination and cooperation. Therefore, the Parties mutually agree that no monetary compensation shall be paid under this Agreement.
4. **Access Conditions.** The User shall not access the System in violation of this Agreement, any law, rule, regulation or order of any governmental authority having jurisdiction, including, without limitation, the County’s Chief Technology Officer. The User shall, prior to access and throughout the duration of this Agreement, implement and maintain current network security best practices, including up to date endpoint detection security tools with behavior-detection and exploit mitigation capabilities, such as anti-virus and all appropriate security patches. The User shall immediately notify the County Chief Technology Officer upon discovery of any security incident that may threaten or compromise the integrity of the System.
5. **Performance and Maintenance.** The County shall be responsible for all maintenance of the System. The User acknowledges and agrees that the County cannot guarantee the performance of the System, and the User releases the County from any liability arising from a loss of access to the System or any injury or loss incurred as a result of access to the System.
6. **Title.** All rights, title and interest in the System shall at all times remain exclusively with the County, and the User disclaims any rights, title and interest in the System arising from the access granted herein.

7. **Representations and Covenants Regarding Authorizations.**

- (a) County hereby represents, warrants and covenants to User as follows:
 - (i) County is duly organized and validly existing under the laws of the State of Ohio and has full power and authority to execute, deliver and perform the terms of this Agreement.
 - (ii) There is no litigation, proceeding or governmental investigation to which County is a party which could result in any material adverse effect on its ability to perform its obligations under this Agreement.
- (b) User hereby represents warrants and covenants to County as follows:
 - (i) User is duly organized and validly existing under the laws of the State of Ohio and has full power and authority to execute, deliver and perform the terms of this Agreement.
 - (ii) There is no litigation, proceeding or governmental investigation to which User is a party which could result in any material adverse effect on its ability to perform its obligations under this Agreement.

8. **Compliance with Law.** Each Party shall perform its respective rights and obligations hereunder in accordance with all applicable laws, rules and regulations imposed by any governmental authority.

9. **Changes to the System.** The User acknowledges that, from time to time, the County may elect or be required to make changes to the System. The County shall use reasonable efforts to maintain User's access without material interruption, but User acknowledges that access may be denied during such changes.

10. **Confidential Information.** Each Party acknowledges that in the course of the performance of this Agreement, it may have access to and/or may receive from the other Party privileged or confidential information. Each Party agrees to maintain the confidentiality of the information and to use the same degree of care as it uses with regard to its own confidential information to prevent the disclosure, publication or unauthorized use of the confidential information. The County shall not be considered the custodian of any records of User, and each Party shall remain responsible for its own compliance with applicable public records laws.

11. **Assignment.** User shall not assign, in whole or in part, this Agreement or its rights, interests, obligations, or duties stated herein.

12. **Liability; Warranties.** NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, EXCEPT TO THE EXTENT CAUSED BY ITS WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, COSTS, OR LIABILITIES, FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF, OR IN CONNECTION WITH, THE PARTY'S PERFORMANCE OF THIS AGREEMENT. THE COUNTY MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM OR THE ANCILLARY SERVICES IT PROVIDES HEREUNDER, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

13. Miscellaneous.

(a) Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement, it shall not be necessary to produce more than one complete set of such counterparts.

(b) Captions. Article and Section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(c) Governing Law and Binding Effect. This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by the laws of the State of Ohio. The exclusive venue for all cases or disputes related to or arising out of this Agreement shall be the state courts in Delaware County, Ohio. This Agreement shall bind and inure to the benefit of each of the Parties and their successors.

(d) Waivers and Amendments. This Agreement may not be amended nor shall any waiver, change, modification, consent or discharge be affected, except by an instrument in writing adopted, in the case of an amendment, by each Party and, in the case of a waiver, consent or discharge, by the Party against whom enforcement of such instrument is sought. Any consent by either Party to, or waiver of, a breach by the other Party shall not constitute a waiver or consent to any subsequent or different breach. If either Party shall fail to enforce a breach of this Agreement by the other Party, such failure to enforce shall not be considered consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

(e) Relationship Not a Partnership or an Agency. The Relationship between County and User shall not be that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or agency agreement between them.

(f) Notices. All notices, requests, demands, statements, reports and other communications under this Agreement shall be in writing and deemed to be duly delivered, if delivered in person, by overnight courier or by certified or registered mail:

For User:

For County:

Chief Technology Officer
10 Court Street
Delaware, OH 43015
740-833-2060

Either Party hereto may change its mailing address by giving notice to the other pursuant to the provisions of this paragraph.

(g) Disclaimers. There are no agreements, warranties or representations, express or implied either in fact or by operation of law, statutory or otherwise, including warranties of merchantability and fitness for a particular purpose or use, except those expressly set forth herein.

(h) Entire Agreement. This Agreement constitutes the entire agreement between User and County with respect to the subject matter hereof and supersedes all prior agreements and understandings between them as to such subject matter, and there are no restrictions, agreements, arrangements or undertaking, oral or written, between User and County relating to the transactions contemplated hereby which are not fully expressed or referred to herein.

(i) Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement on the dates indicated below.

DELAWARE COUNTY BOARD OF COMMISSIONERS

Tracie Davies, County Administrator

Date

DELAWARE COUNTY AUTOMATIC DATA PROCESSING BOARD

George Kaitza, Chief Administrator

Date

USER

Authorized Signature

Date

Name and Title