

**COOPERATIVE AGREEMENT
BETWEEN
THE CITY OF POWELL AND
LIBERTY TOWNSHIP**

**CITY OF POWELL
Ordinance 2016-42
Exhibit A**

This Cooperative Agreement (this "Agreement") made by and between the City of Powell (the "City") and Liberty Township, Delaware County, Ohio (the "Township"), effective this __ day of September 2016. The City and the Township are each sometimes referred to herein as a "Party" and, collectively, are sometimes referred to herein as the "Parties".

This Agreement shall be for the purpose of setting forth the respective obligations and commitments of the Parties to undertake certain multi-use pathway improvements, including a multi-use pathway in the unincorporated area of the Township along Liberty Road (the "Township Pathway"), which Township Pathway is more particularly depicted/described on the Township project description attached hereto as Exhibit A and incorporated herein by reference.

In consideration of the mutual benefit to each of the Parties, the Parties agree that:

1. With respect to the 2016 City of Powell/Liberty Township Multi-use Pathway Improvements Project:
 - A. The proposed improvements will consist of the certain multi-use pathway improvements detailed in plans and specifications on file in the office of the City Engineer and entitled "2016 City of Powell/Liberty Township Multi-use Pathway Improvement Project" (the "Project"), including any approved modifications.
 - B. With respect to engineering of the multi-use pathway improvements:
 - i. The Township has entered into a contract with CW Design to develop engineering for the Township Pathway. The Township shall pay the costs thereof.
 - ii. The City has also entered into a contract with CW Design to develop engineering for the remaining portions of the multi-use pathway other than the Township Pathway. The City shall pay the costs thereof.
 - C. With respect to easement acquisition and utility relocation required in connection with Project:
 - i. The Township will administer all easement acquisition and utility relocation required for the Township Pathway. The Township shall pay the costs thereof.
 - ii. The City will administer all easement acquisition and utility relocation required for the remaining portions of the Project other than the Township Pathway. The City shall pay the costs thereof.
 - D. With respect to construction and construction administration required in connection with Project:
 - i. The City will advertise, accept bids, award the contract and administer the construction of the Project.
 - ii. The City will provide a bid summary to the Township for input as to the proposed contractor prior to contract award.
 - iii. The Township shall provide the Township Contribution (defined below) to the City upon award of the Project to pay for the estimated portion of the cost to construct the Township Pathway. The "Township Contribution" means an amount equal to \$40,300 (the engineers estimate of the cost of the Township Pathway), plus a pro rata portion of the cost of construction inspection services which the Parties agree is \$2,500 (10% of the estimated total construction inspection estimate of \$25,000).
 - iv. The City will solicit input and final approval from the Township on any construction issue and/or use of contingency funds that would increase the Township cost contribution to the Project.
 - v. Upon final completion of the Project, the City shall promptly provide to the Township a final

accounting of the actual costs of construction and inspection of the Township Pathway. In the event that the actual costs of the Township Pathway exceed the Township Contribution, the City will thereafter submit an invoice to the Township for reimbursement of the additional funds needed to complete the Township Pathway. Township shall pay such invoice within 30 days of receipt. In the event that the actual costs of the Township Pathway are less than the Township Contribution, the City will return the unused portion of the Township Contribution within 30 days of the final accounting.

2. Miscellaneous Provisions.

- a. Binding Effect. The provisions of this Agreement shall be binding upon the successors or assigns of the Parties.
- b. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.
- c. Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.
- d. Extent of Covenants: No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the Parties other than in his or her official capacity, and neither the members of the City Council nor any individual executing this Agreement on behalf of either the City or the Township shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements contained in this Agreement.
- e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterparts, disputes, and other matters in question arising out of our relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Delaware County, Ohio.
- f. Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. Any process, pleadings, notice of other papers served upon the Parties shall be sent by registered or certified mail at their respective Notice Address, or to such other address or addresses as may be furnished by one Party to the other.

Notices shall be sent to the following Parties:

As to the City:

As to the Township:

g. **Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

In witness whereof, the Parties have executed this Cooperative Agreement as of the Effective Date.

THE CITY OF POWELL

By: _____
Stephen Lutz
City Manager

LIBERTY TOWNSHIP

By: _____
Matthew Huffman
Township Administrator

FINANCE DIRECTOR'S CERTIFICATE

The undersigned, Finance Director of the City of Powell, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the Village during the year 2016, if any, under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the Village or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

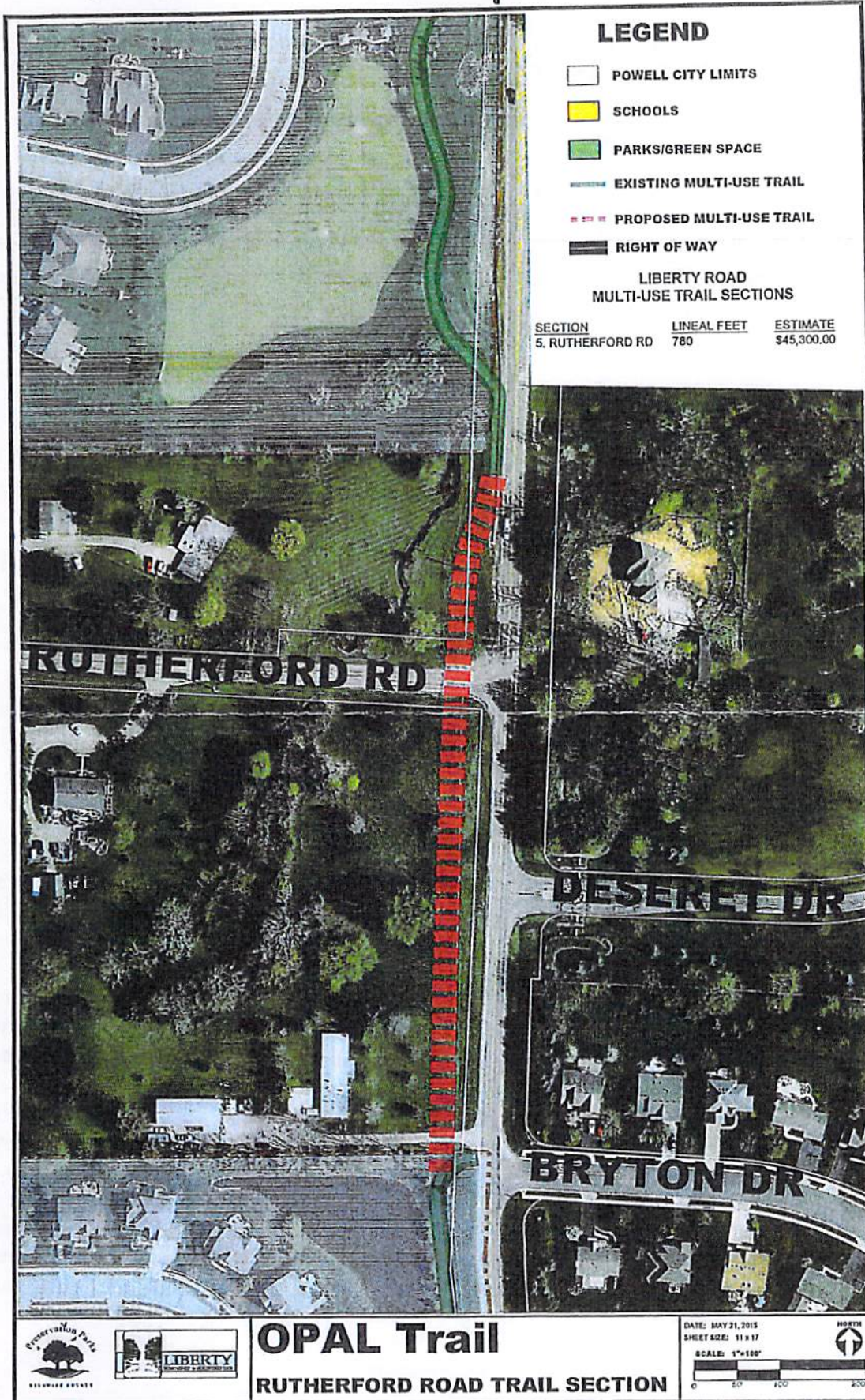
Dated: _____

Debra Miller, Finance Director

EXHIBIT A

Project Description

Exhibit "A"



LEGEND

- POWELL CITY LIMITS
- SCHOOLS
- PARKS/GREEN SPACE
- EXISTING MULTI-USE TRAIL
- PROPOSED MULTI-USE TRAIL
- RIGHT OF WAY

LIBERTY ROAD MULTI-USE TRAIL SECTIONS

SECTION	LINEAL FEET	ESTIMATE
5. RUTHERFORD RD	780	\$45,300.00

OPAL Trail

RUTHERFORD ROAD TRAIL SECTION

DATE: MAY 21, 2015
 SHEET NO: 11 of 17
 SCALE: 1"=100'

**FIRST AMENDMENT TO COOPERATIVE AGREEMENT BETWEEN
THE CITY OF POWELL AND LIBERTY TOWNSHIP**

This First Amendment of the Cooperative Agreement Between the City of Powell and Liberty Township ("First Amendment") is entered into this _____ day of _____, 20 _____ by and between the City of Powell, Delaware County, Ohio ("City"), whose principal place of business is located at the Powell Municipal Building, 47 Hall Street, Powell, Ohio 43065 and the Board of Trustees, Liberty Township, Delaware County, Ohio ("Township"), whose principal place of business is located at 10104 Brewster Lane, Suite 125, Powell, Ohio 43065 (individually "Party," collectively, "Parties").

WHEREAS, the Parties entered into a Cooperative Agreement dated _____, 20 _____ (hereinafter "Agreement"); and,

WHEREAS, the Parties desire to add certain terms to the Agreement; and,

WHEREAS, the Agreement permits the Agreement to be amended by an instrument in writing executed by the Parties.

NOW THEREFORE, the Parties agree as follows:

1. **COMPETITIVE BIDDING.** The City shall advertise, accept bids, award the contract, and administer the construction of the Project in accordance with all applicable laws and regulations.
2. **TERMINATION.** This Agreement may be terminated for convenience at any time and for any reason upon the mutual written agreement of all of the Parties or upon breach by any non-breaching Party, but only after the non-breaching Party provides notice of the breach to all other Parties and allows the breaching Party a reasonable opportunity to remedy the breach.
3. **PARTIES RESPONSIBLE FOR THEIR OWN ACTIONS.** The Parties are political subdivisions of the State of Ohio and lack authority to indemnify. Therefore, each Party is and shall be responsible for their own actions, and/or the actions of their respective council members, board members, officers, employees, agents, representatives, and/or volunteers resulting from or related to the Township Pathway and/or the performance of this Agreement. In so doing, and to the extent permitted by law, the Parties agree to hold the other Parties harmless.
4. **SUFFICIENT CONSIDERATION.** The Parties agree that the goods, services, and benefits received by each Party pursuant to this Agreement are good and valuable consideration and that this Agreement is supported by sufficient good and

valuable consideration. The Parties agree not to challenge this Agreement on the basis of a lack of consideration.

5. **WARRANTY AGAINST FINDINGS FOR RECOVERY.** Revised Code (O.R.C.) §9.24 prohibits the awarding of a contract to any party against whom the Auditor of the State has issued a finding for recovery if the finding for recovery is “unresolved” at the time of the award. By signing this Agreement, each Party warrants for itself that it is not now, and will not become the subject of an “unresolved” finding for recovery under O.R.C. §9.24. The Parties respectively certify that there are no outstanding findings for recovery pending or issued against the Party by the State of Ohio.
6. **CONTRACT MAXIMUM.** The maximum amount payable pursuant to the Agreement is Fifty Thousand Dollars and Zero Cents (\$50,000.00).
7. **AUTHORITY.** The Parties are authorized to enter this Agreement by, including, but not limited to, R.C. § 9.482.
8. **SIGNATURES.** Any person executing the Agreement and this First Amendment in a representative capacity hereby warrants that he/she has authority to sign the Agreement and this First Amendment or has been duly authorized by his/her principal to execute the Agreement and this First Amendment on such principal’s behalf and is authorized to bind such principal.
9. **CONFLICTS.** In the event of a conflict between the terms of the Agreement and this First Amendment, the terms of this First Amendment shall prevail.
10. **TERMS OF CONTRACT UNCHANGED.** All terms and conditions of the Agreement not changed by this First Amendment remain the same, unchanged, and in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the dates indicated below.

**BOARD OF TRUSTEES
LIBERTY TOWNSHIP
DELAWARE COUNTY, OHIO**

Tom Mitchell
Liberty Township Trustee

Date

Melanie Leneghan
Liberty Township Trustee

Shyra Eichhorn
Liberty Township Trustee

Board of Trustees
Liberty Township, Delaware County, Ohio
10104 Brewster Lane, Suite 125
Powell, Ohio 43065

CITY OF POWELL

Stephen A. Lutz Date
City of Powell
City Manager

City Council
City of Powell, Ohio
Powell Municipal Building
47 Hall Street
Powell, Ohio 43065

Approved as to Form:

Carol Hamilton O' Brien (0026965)
Delaware County Prosecuting Attorney

FISCAL OFFICER'S CERTIFICATION (RC 5705.41(D)):

The Liberty Township Fiscal Officer hereby certifies that the funds required to meet the obligation set forth in the Agreement and this First Amendment have been lawfully appropriated for such purpose and are in the township treasury or in the process of collection, free from any other encumbrances. The Liberty Township Fiscal Officer also certifies that it has confirmed with the Ohio Auditor of State that the City of Powell, Ohio has no unresolved findings for recovery pending or issued against it by the State of Ohio.

Nancy Denutte
Liberty Township Fiscal Officer

PO# _____