

**COOPERATIVE PROJECT AGREEMENT
BETWEEN
DELAWARE COUNTY
AND
THE CITY OF POWELL
FOR IMPROVEMENTS TO THE INTERSECTION OF
LIBERTY ROAD AND SELDOM SEEN ROAD**

**CITY OF POWELL
Ordinance 2016-53
Exhibit A**

This Agreement made by and between the Board of Commissioners of Delaware County (“County”) and the City of Powell (“City”), hereinafter known as the Parties to the Agreement;

WHEREAS, the City of Powell Engineer (“City Engineer”) and the Delaware County Engineer (“County Engineer”) have determined the need to make safety and traffic flow improvements to the intersection of Liberty Road and Seldom Seen Road including construction of a traffic signal and related improvements (the “Improvements”); and,

WHEREAS, the Parties desire to cooperate for the purpose of undertaking a Project to improve said intersection;

WITNESSETH:

In consideration of the mutual benefits accruing to both Parties, each Party hereby agrees as follows:

1 SCOPE OF PROJECT

1.1 The Project will consist of constructing a traffic signal with turn lanes at the intersection of Liberty Road (Liberty Street) and Seldom Seen Road for the purposes of improving traffic flow, mobility and safety at the intersection, together with any incidental work as determined necessary to complete the Project by the mutual agreement of the City Engineer and County Engineer. The construction plans shall be prepared in such a manner as to provide project flexibility for the purpose of being able to construct the traffic signals improvements as a stand-alone project, as determined necessary by the City.

2 INITIATION OF PROJECT

2.1 The Parties will each enact necessary legislation to declare the Project necessary either as part of the resolution approving this Agreement or by separate action.

3 AUTHORITY OF ENGINEER

3.1 The County authorizes the County Engineer, and the City authorizes the City Engineer to administer and carry out the provisions of this contract on its behalf and to take such necessary actions to complete the Project as contemplated by this Agreement. Such authority will not include approval of agreements or obligations upon the county that would otherwise require County or City approval, except where specifically enumerated within this Agreement.

4 PROJECT COSTS

4.1 Each Party will pay for **fifty percent (50%)** of the Total Cost ~~for Engineering for~~ the Project.

4.2 For the purposes of this Agreement, the Total Cost of the Project shall include all engineering, environmental, utility relocation, utility connection, right of way land purchase and acquisition services, construction, inspection and testing expenses determined to be necessary for completion of the project by both Parties, but shall exclude any salaries, benefits and direct costs related to the performance of work by regular employees of the Parties on the Project.

5 PRELIMINARY ENGINEERING^[CH1]

5.1 **The County** will select a consulting engineering firm(s) (the “Consultant(s)”) to provide preliminary engineering services including design and environmental services for the Project through a qualifications based selection process conforming to Ohio Department of Transportation (ODOT) requirements, and will negotiate a fair and reasonable fee for performance of said services, and will provide copies of all proposals to **the City** for review, and **the City** will promptly review said submittals within 14 days or other reasonable timeframe agreed by the Parties.

- 5.2 **The City** will approve the fee proposal prior to **the County** entering into contract with the selected Consultant.
- 5.3 **The County** will administer the Consultant contract and the preliminary engineering phase of the project, including preparation of all surveys, plans, reports, specifications and estimates for the Project.
- 5.4 **The County** will provide copies of design submittals, including all surveys, plans, reports, specifications and estimates to **the City** for review, and **the City** will promptly review said submittals within 30 days or other reasonable timeframe as agreed by the Parties.
- 5.5 The Parties will cooperate to hold meetings as required for the Project.

6 **RIGHT OF WAY ACQUISITION**

- 6.1 **The County** will acquire the necessary rights of way for the Project in accordance with Chapter 163 of the Ohio Revised Code, and will perform, or obtain through a qualified consultant, all title research, appraisals, negotiation, closing and recording for all parcels involved in the Project.
- 6.2 Prior to making any good faith offer to acquire property for the Project, **the County** will provide copies of appraisals and the good faith offer to **the City** for review, and **the City** will promptly review said submittals within 14 days or other reasonable timeframe agreed by the Parties.
- 6.3 **The City** will approve all good faith offers prior to **the County** making the offer for parcels located within **the City**.

6.4 If the County is unable to acquire the necessary rights of way through good faith negotiation, **the County** will file for appropriation of ~~any~~ parcels located outside of the City corporation limits, will deposit the estimated compensation due the property owner, litigate the case and make any additional payments as are required by settlements or judgments. [HA2]

~~6.4.5~~ 6.4.5 The City will file appropriation for any parcels located within the City corporation limits, will deposit the estimated compensation due the property owner, litigate the case and make any additional payments as are required by settlements or judgements.

~~6.5.6~~ 6.5.6 ~~The City, when requested by the County~~ The Parties agree to, will attend meetings and assist each other in the acquisition of right of way in any other manner as is reasonably necessary to complete the Project.

~~6.6.7~~ 6.6.7 If employing the assistance of an acquisition agent or firm, **the County** will negotiate a fair and reasonable fee for performance of said services, and will provide **the City** a reasonable opportunity to review the fee prior to entering into contract with said firm(s).

~~6.7.8~~ 6.7.8 If necessary, upon completion of acquisition, **the County** will certify to ODOT and/or any other agency as necessary, that the acquisition of all necessary rights of way is completed.

~~6.8.9~~ 6.8.9 With respect to interest being obtained in the right of way for the Project, **the County** will make proper notation on the right of way plans and will prepare instruments of conveyance to acquire all necessary rights of way for the Project as follows:

~~6.8.16.9.1~~ 6.8.9.1 All permanent right of way, including easement or fee simple interest in properties situated within unincorporated areas will be acquired in the name and for the use of the “**Delaware County Board of Commissioners**”; and,

~~6.8.26.9.2~~ 6.8.9.2 All permanent right of way, including easement or fee simple interest in properties situated within the corporation limits of the City will be acquired in the name and for the use of “**City of Powell**”

~~6.8.36.9.3~~ 6.8.9.3 All temporary easements or work agreements, regardless of location, will be acquired in the name and for the use of the “**Delaware County Board of Commissioners**”.

7 **UTILITIES**

- 7.1 **The County** will order relocation of facilities and coordinate the relocation of affected utilities on the Project.

- 7.2 For any reimbursable utility relocations, **the County** will provide an estimate of the cost of such relocations to **the City** for approval prior to authorizing the work.
- 7.3 If required, **the County** will certify to ODOT or other public agency as necessary that right of way acquisition is complete and that utility relocation is completed or will be completed to proceed to receive necessary ODOT or federal authorization(s) to bid the construction contract for the Project.

8 CONSTRUCTION

- 8.1 **The County** will act as the lead Local Public Agency and administer the construction phase of the Project including approving necessary agreements with ODOT, bidding and awarding the construction contract and managing the construction contract, including providing for the necessary inspection and testing of work.
- 8.2 If the Project is constructed in Phases, **the County** will administer each Phase.
- 8.3 **The County** will not proceed with any contract modifications or order work in excess of ten (10) percent of the contract amount without written consent of **the City**, ODOT or any applicable agency that provides funding for the project.

9 COST ACCOUNTING AND PAYMENT

- 9.1 The Parties agree to each keep a detailed record of all eligible expenses relating to this Project and to transmit copies of the same to the other Party for its review when an invoice is submitted or otherwise when so requested.
- 9.2 **The County** will pay for all Project costs initially and invoice **the City** for its share of expenses incurred to date by **the County** up to four (4) times per year, no more frequently than quarterly and **the City** will pay the invoice within 30 days of approval.

10 OPERATION AND MAINTENANCE OF THE PROJECT

- 10.1 During the construction of the Project and until final acceptance by the Parties, **the County** will operate and maintain the improvements.
- 10.2 **The City** will maintain the completed traffic signal and lighting and pay all costs associated with supply of electrical energy. **The County** and **City** will maintain all other portions of the Project based on their respective jurisdictions and as otherwise required by law or by prior agreement(s).

11 GENERAL PROVISIONS

- 11.1 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, will constitute the entire understanding and agreement, will supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 11.2 **Financial Audits:** The agency managing the respective phase of work of the Project will be responsible for conducting and coordinating any federal or state audits of funds provided in those phases.
- 11.3 **Governing Law:** This Agreement will be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement will be filed in and heard before the courts of Delaware County, Ohio.
- 11.4 **Headings:** The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and will not affect the construction or interpretation of any of its provisions. This Agreement will be deemed to have been drafted by both parties and no purposes of interpretation will be made to the contrary.
- 11.5 **Waivers:** No waiver of breach of any provision of this Agreement will in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement will be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver will not constitute and will not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to

waive another specific term or provision or future breach.

11.6 **Severability:** If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance will to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it will be held invalid or unenforceable will not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof will, in all other respects, continue to be effective and to be complied with.

In witness whereof, the Parties hereto have executed this agreement.

CITY OF POWELL

By: _____ Date: _____
Steve Lutz, City Manager

DELAWARE COUNTY

By: _____ Date: _____
Barb Lewis, President
Board of County Commissioners
Pursuant to Resolution Nos. 11-137 and _____

By: _____ Date: _____
Chris Bauserman, P.E., P.S.
Delaware County Engineer

Approved as to form:

Carol O'Brien, County Prosecuting Attorney