

**COOPERATION AGREEMENT
BY AND BETWEEN
THE CITY OF POWELL
AND
DELAWARE COUNTY
FOR RESURFACING OF SELDOM SEEN ROAD**

This Agreement is made and entered into this __day of _____, _____ by and between the Delaware County Board of Commissioners, 101 North Sandusky Street, Delaware, Ohio 43015 (the "County"), and the City of Powell, 47 Hall Street Powell, OH 43065 (the "City"), hereinafter referred to individually as "Party" or collectively as the "Parties".

1 AUTHORITY

1.1 Pursuant to section 9.482 of the Revised Code, a political subdivision may enter into an agreement with another political subdivision whereby a contracting political subdivision agrees to exercise any power, perform any function, or render any service for another contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render.

2 PURPOSE

2.1 The City and County desire to make improvements to SELDOM SEEN ROAD, including ASPHALT PAVING from WEST OF LIBERTY ROAD TO THE CSX RAILROAD TRACKS AND SPOT REPAIRS ON SELDOM SEEN ROAD WEST OF THE CSX RAILROAD TRACKS TO SAWMILL PARKWAY (the "Project").

2.2 This Agreement shall establish the terms and conditions whereby the Parties will cooperate to undertake the Project.

3 NOTICES

3.1 Notices served under this Agreement shall be made in writing to the representatives of each party listed below:

3.1.1 County:

Robert Riley, PE, PS
Chief Deputy
Engineer 50
Channing Street
Delaware, OH 43015
email: rriley@co.delaware.oh.us

3.1.2 City:

Chris Huber, P.E.
City Engineer
47 Hall St.
Powell, OH 43065
email: CHuber@cityofpowell.us

4 MANAGEMENT OF PROJECT

4.1 The County, acting through the County Engineer will design, administer bidding and award the construction contract and manage the construction of the Project, and shall coordinate the same with the City Engineer, allowing reasonable opportunity for the City to provide comments and approvals of plans, specifications, and estimates for the Project.

5 ESTIMATED COSTS

5.1 The estimated costs of the project are as follows:

5.1.1	Total Cost of	\$
5.1.2	County Share:	\$
5.1.3	City Share:	\$ 104,000

5.2 The City and County acknowledge that the estimated costs are based on the County Engineer's opinion of probable construction costs, and that the cost sharing as specified above shall apply to the actual work performed in accordance with the plans and specifications for the Project at the awarded contract unit price, and that the share for any lump sum contract items shall be apportioned pro rata based upon the amount of work performed within the City and County jurisdictions as determined by County Engineer.

6 COST PARTICIPATION

6.1 The County and City shall separately pay the contractor for all project costs relating to the construction of the Project situated within their respective jurisdictions.

6.2 The County and City shall pay their invoices within 30 days of receipt of the invoices.

7 PERSONNEL

7.1 The Parties each agree to maintain control over their respective personnel, and this Agreement shall not be construed to alter the employment relationship each Party has with its respective personnel. Each Party shall be responsible for the compensation, benefits, and liabilities of its respective personnel and hereby agrees to release the other Party from any responsibility therefor.

8 EQUIPMENT AND FACILITIES

8.1 Each Party to this Agreement shall be responsible for providing its own equipment and facilities. In no way shall this Agreement be construed to require the sale or donation of equipment under the ownership and control of either Party of this Agreement.

9 RECORDS

9.1 The Parties agree that each shall maintain public records concerning the services provided under this Agreement, pursuant to the laws of the State of Ohio pertaining to public records.

10 TERM

10.1 This Agreement shall take immediate effect upon approval by all Parties hereto and

shall continue in full force and effect until final completion of the Project, unless and until modified, superseded, or terminated in accordance with this Section, or unless one or both of the Parties at any time determines not to proceed with the Project.

- 10.2 This Agreement may only be amended in writing with the mutual consent and agreement of the Parties.

11 LEGAL CONTINGENCIES

- 11.1 In the event a change in law, whether by statute, judicial determination, or administrative action, affects this Agreement or the ability of the Parties to enter into, or continue to operate pursuant to, this Agreement, the Parties mutually agree to immediately institute a review of this Agreement. The Parties agree to negotiate in good faith to address any necessary modifications to this Agreement, to the extent permitted by applicable law.

12 INSURANCE AND LIABILITY

- 12.1 The Parties are both political subdivisions and lack authority to indemnify.
- 12.2 Each Party shall, for the life of this Agreement, maintain comprehensive general liability insurance coverage, with minimum limits in the amount of \$1,000,000.00 each occurrence or equivalent and \$2,000,000.00 in the aggregate, and shall cause the other Party to be named as an additional insured on any applicable insurance policies.

13 MISCELLANEOUS TERMS & CONDITIONS

- 13.1 Entire Agreement: This Agreement shall constitute the entire understanding and agreement between the Parties and shall supersede all prior understandings and agreements relating to the subject matter hereof. This Agreement shall not be assigned.
- 13.2 Governing Law and Disputes: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. The Parties shall make good faith efforts to directly negotiate any disputes arising from this Agreement. If direct negotiations shall fail, the Parties agree to mediate the dispute with a mediator chosen by agreement between the Parties. If mediation shall fail, any and all legal disputes arising from this Agreement may only be filed in and heard before the courts of Delaware County, Ohio.
- 13.3 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 13.4 Waivers: No waiver of breach of any provision of this Agreement shall 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 shall 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 shall not constitute and shall 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.

13.5 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall 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 shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

DELAWARE COUNTY BOARD OF COMMISSIONERS

By: _____
Gary Merrell, President Date
Pursuant to Resolution No. 11-137
And Resolution No. _____

CITY OF POWELL

By: _____
Stephen Lutz Date
City Manager

DELAWARE COUNTY ENGINEER

By: _____
Chris Bauserman, County Engineer Date

Approved as to form:

Carol Hamilton O'Brien
Delaware County Prosecuting Attorney

FISCAL OFFICER CERTIFICATIONS

DELAWARE COUNTY:

The Delaware County Auditor hereby certifies that the funds required to meet the obligations set forth in this Agreement have been lawfully appropriated for such purpose and are in the County treasury or in the process of collection, free from any other encumbrances. The Delaware County Auditor also certifies that it has been confirmed with the Ohio Auditor of State that the City has no unresolved findings for recovery issued against it by the State of Ohio.

Date: _____20____

George Kaitsa,
Auditor Delaware
County, Ohio

CITY OF POWELL:

The fiscal officer for the City hereby certifies that the funds required to meet the obligations set forth in this Agreement have been lawfully appropriated for such purpose and are in the City treasury or in the process of collection, free from any other encumbrances. The fiscal officer also certifies that it has been confirmed with the Ohio Auditor of State that Delaware County has no unresolved findings for recovery issued against it by the State of Ohio.

Date: _____20____

Debra Miller, Finance Director