

**CITY OF POWELL
Ordinance 2019-39
Exhibit A**



65 East State Street, Suite 312, Columbus, Ohio 43215

<i>Commission Chair</i>	Patrick Ginnetti	<i>Director</i>	Linda S. Bailiff
<i>Commissioners</i>	John Jones Dean C. Ringle	Kimberly Marshall Sandra Tunnell	Randy Riley

July 01, 2019

Stephen Lutz, City Manager
City of Powell
47 Hall Street
Powell, OH 43065

Re: Project No. CQ09W

Dear Mr. Lutz:

Your request for financial assistance has been approved for the Project entitled Liberty Road and Seldom Seen Road in the amount of \$498,640. The enclosed Project Agreement defines your responsibilities in accepting this financial assistance. Please adhere to the following:

- Review the document carefully to be sure you understand your responsibilities and to check that it accurately describes your Project.
- Sign the Agreement where indicated and retain for your records.
- Scan/copy the signature page and return to us by either email to abbey.dehart@pwc.ohio.gov, or by US Mail to the address listed above. Include any changes to officers and minor schedule changes with your transmittal.
- Use the above referenced Project number in your correspondence.

Disbursement requests cannot be approved unless we have received the Agreement signature page and approved the designated vendor if we will directly pay your vendor (vs. reimbursement).

The Project Manager named in the Agreement will receive a separate mailing pertaining to our program requirements detailed on our website at www.pwc.ohio.gov including contractual requirements for bid documents, and reporting of in-kind or force account contributions. Your Chief Fiscal Officer will also receive a mailing pertaining to Project financial information.

If you have questions, please contact your Program Representative, Abbey DeHart, at 614 728-2466, or by email at abbey.dehart@pwc.ohio.gov.

Respectfully,

A handwritten signature in blue ink that reads "Linda S. Bailiff".

Linda S. Bailiff
Director

Ohio Public Works Commission

PROJECT GRANT AGREEMENT

STATE CAPITAL IMPROVEMENTS PROGRAM

Pursuant to Ohio Revised Code Chapter 164 and Ohio Administrative Code Chapter 164-1, this Project Grant Agreement (hereinafter referred to as the Agreement) is entered into **07/01/2019** by and between the State of Ohio, acting by and through the Director of the Ohio Public Works Commission (hereinafter referred to as the "Director" or the "OPWC"), and **City of Powell, Delaware County** (hereinafter referred to as the "Recipient"), in respect of the Project named **Liberty Road and Seldom Seen Road** as described in Appendix A of this Agreement ("Project") to provide **46%** of the total Project cost ("Participation Percentage"), not to exceed **Four Hundred Ninety-Eight Thousand Six Hundred Forty Dollars (\$498,640)**, for the sole and express purpose of financing or reimbursing costs of the Project as more fully set forth in this Agreement and the Appendices attached hereto.

OPWC Project **CQ09W**

RECITALS

Pursuant to Ohio Revised Code 164.02, the Ohio General Assembly created the Ohio Public Works Commission (OPWC) to implement the policies set forth in Article VIII, of the Ohio Constitution and Chapter 164 of the Ohio Revised Code;

Pursuant to Ohio Revised Code 164.05, the Director is empowered to (i) enter into agreements with Local Subdivisions to provide loans, grants, and local debt support for Capital Improvement Projects; and (ii) authorize payments to Local Subdivisions or their Contractors for costs incurred for Capital Improvement Projects;

Ohio Revised Code Sections 164.05 and 164.06 permit a grant of funds, or other forms of financial assistance, for such a Capital Improvement Project to be expended and provided only after the District Committee has submitted a request to fund the Capital Improvement Project outlining the Recipient's planned use of the funds; and subsequent approval of the request by the Director;

The Recipient desires to engage in the Capital Improvement Project described in Appendix A of this Agreement; and

The Project has been duly recommended to the Director pursuant to Ohio Revised Code 164.06 by the District Committee of which the Recipient is a part;

In consideration of the promises and covenants herein contained, the undersigned agree as follows:

I. DEFINITIONS. The following words and terms as hereinafter used in this Agreement shall have the following meanings.

“Bond Counsel” means an attorney or firm of attorneys of nationally recognized standing on the subject of municipal bonds satisfactory to the Director.

“Business Day” means a day of the year on which banks located in Columbus, Ohio and in New York, New York are not required or authorized by law to remain closed and on which The New York Stock Exchange is not closed.

“Capital Improvement” or “Capital Improvement Project” means the acquisition, construction, reconstruction, improvement, planning and equipping of roads and bridges, appurtenances to roads and bridges to enhance the safety of animal-drawn vehicles, pedestrians, and bicycles, wastewater treatment facilities, water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage and treatment facilities including real property, interests in real property, facilities, and equipment related or incidental to those facilities.

“Chief Executive Officer” means the single office or official of the Recipient designated in Appendix A pursuant to Section V, or authorized designee as per written notification to the Director.

“Chief Fiscal Officer” means the single office or official of the Recipient designated in Appendix A pursuant to Section V, or authorized designee as per written notification to the Director.

“Code” means the Internal Revenue Code of 1986, as amended. Each reference to the Code herein shall be deemed to include the United States Treasury Regulations in effect, whether temporary or final, with respect thereto and applicable to the Infrastructure Bonds or the use of the proceeds thereof.

“Contractor” means a person who has a direct contractual relationship with the Recipient and is the manufacturer of all or a portion of the Project; or the provider of labor, materials or services in connection with the construction, reconstruction, expansion, improvement or engineering of the Project; or both.

“Cost of Capital Improvement Projects” means the costs of acquiring, constructing, reconstructing, expanding, improving and engineering Capital Improvement Projects, and related financing costs.

“District Committees” means the District Public Works Integrating Committees and the Executive Committees created pursuant to Ohio Revised Code 164.04.

“Effective Date” means the date set forth on Page One of this Agreement.

“Eligible Project Costs” means such portion of the Project costs disbursed and loaned from the OPWC to the Recipient for the sole and express purpose of acquiring, constructing, reconstructing, expanding, improving, engineering and equipping the Project, other direct expenses, and related financing costs thereto.

“Governing Body” means the board of county commissioners or a county council if a county; the legislative authority if a municipal corporation; or the board of township trustees if a township; the board of directors if a sanitary district; or the board of trustees if a regional water and sewer district.

“Local Subdivision” means any county, municipal corporation, township, sanitary district or regional water and sewer district of the State.

“Local Subdivision Contribution” means the Local Subdivision financial share used for the sole and express purpose for paying or reimbursing the costs certified to the Director under this Agreement for completion of the project.

“Participation Percentage” means the rounded percentage of the total actual Project costs that will be contributed by the OPWC, not to exceed the maximum dollar contribution of the OPWC identified in this Project Agreement, and the rounded percentage of the total actual Project costs that will be contributed by the Recipient. Both percentages are identified in Appendix B. If the total actual Project costs exceed the estimated Project costs identified in Appendix B, the Local Subdivision Participation Percentage will increase to reflect the cost overrun, while the OPWC percentage contribution will decrease recognizing that there is a maximum dollar contribution from the OPWC which is identified in this Project Agreement.

“Private Business Use” means use (directly or indirectly) in a trade or business or activity carried on by any Private Person (other than a Tax-Exempt Organization) other than use as a member of, and on the same basis as, the public.

“Private Person” means any person, firm, entity or individual who or which is other than a “governmental unit” as that term is defined in Code Section 150 and used in Code Sections 141 and 148.

“Project” means the scope of work specified in Appendix A.

“Project Manager” means the principal employee or agent of the Recipient having administrative authority over the Project designated in Appendix A pursuant to Section V, or authorized designee as per written notification to the Director.

“State” means the State of Ohio.

“Tax-Exempt Organization” means a “governmental unit,” as such term is used in Code Sections 141 and 148.

II. FINANCIAL ASSISTANCE. Subject to the terms and conditions contained herein, the Director hereby grants to the Recipient financial assistance, as established in this section, for the sole and express purpose of paying or reimbursing the eligible costs certified to the Director under this Agreement for the completion of the Project.

A. *The Grant.* The OPWC hereby agrees to provide financial assistance in the form of a grant, from the State Capital Improvements Fund, which constitutes the proceeds of the Infrastructure Bonds, in an amount not to exceed **Four Hundred Ninety-Eight Thousand Six Hundred Forty Dollars (\$498,640)**.

B. *Joint Funded Project with the Ohio Department of Transportation.* For those projects advertised, awarded and administered by the Ohio Department of Transportation (ODOT), the Recipient and the Director hereby assign certain responsibilities to the ODOT, an authorized representative of the State of Ohio. Notwithstanding Sections V.A., V.B., and V.C. of the Project Agreement, Recipient hereby acknowledges that upon notification by the ODOT, all payments for eligible project costs will be disbursed by the Director and the OPWC directly to the ODOT. A Memorandum of Funds issued by the ODOT shall be used to certify the estimated project costs. Upon receipt of a Memorandum of Funds from the ODOT, the OPWC shall transfer funds directly to the ODOT via an Intra-State Transfer Voucher. The amount or amounts transferred shall be determined by applying the Participation Percentages defined in Appendix B to those eligible project costs within the Memorandum of Funds.

III. LOCAL SUBDIVISION CONTRIBUTION. The Recipient shall, at a minimum, contribute to the Project the Local Subdivision Participation Percentage as set forth in Appendix B of this Agreement.

IV. PROJECT SCHEDULE. Construction of the Project must begin within one year of the Effective Date of this Agreement, or this Agreement may become null and void at the sole discretion of the Director. A preliminary construction schedule is provided in Appendix A. Delays, with reason for the delay(s), must be communicated to the Director as soon as possible. The Director will review written requests for extensions and may extend the construction start date, providing that the Project can be completed within a reasonable time frame.

V. DISBURSEMENTS. All payments made by the OPWC shall be made directly to the contractor that performed the work on the Project and originated the invoice unless the Recipient requests reimbursement. The following provisions apply to Project disbursements:

A. *Project Administration Designation.* Pursuant to Ohio Administrative Code 164-1-21(B) (1-3), the Recipient shall designate its Chief Executive Officer, Chief Fiscal Officer and Project Manager in Appendix A of this Agreement. The Director and OPWC must be notified of changes in these designations in writing including the addition of designees or alternates.

B. *Disbursements to Contractors to Pay Costs of the Project.* The Recipient shall submit to the Director a Disbursement Request, a form of which is attached, together with the information and certifications required by this section, unless otherwise approved by the Director. The dollar amount set forth in the Disbursement Request shall be calculated based on the Participation Percentage set forth on Page One of this Agreement or as amended, to account for changed conditions in the Project financing scheme. If all requirements for disbursement set forth herein are deemed by the Director to be accurate and completed, the Director shall initiate a voucher in accordance with applicable State requirements for the payment of the amount set forth in the

Disbursement Request. Upon receipt of a warrant from the Office of Budget and Management, Ohio Shared Services, drawn in connection with the voucher, the Director shall forward the warrant by regular first class United States mail or electronic funds transfer, to the contractor or other authorized recipient designated in the Disbursement Request.

Prior to any disbursement from the Fund, the following documents shall be submitted to the Director by the Recipient:

1. An invoice submitted to the Recipient by the Contractor documenting work performed or materials or labor supplied;
2. If the request is for disbursement to the Recipient, proof of payment of the invoice such as check, warrant, or other evidence satisfactory to the Director that payment of such sums has been made by the Recipient in connection with the portion of the Project for which payment is requested;
3. A Disbursement Request Form properly certified by the Project Manager, Chief Fiscal Officer and the Chief Executive Officer; and
4. Such other certificates, documents and other information as the Director may reasonably require.

If the Director finds that the documents comply with the requirements of this Agreement, the Director is authorized to cause the disbursement of moneys from the Fund for payment of the identified Project costs.

The Recipient represents that the Project was initially constructed, installed or acquired by the Recipient no earlier than the execution date of this Agreement.

C. *Limitations on Use.* No part of the moneys delivered to the Recipient pursuant to Section II is being or will be used to refinance, retire, redeem, or otherwise pay debt service on all or any part of any governmental obligations regardless of whether the interest on such obligations is or was excluded from gross income for federal income tax purposes.

D. *Project Scope.* The physical scope of the Project shall be limited to only those Capital Improvements as described in Appendix A of this Agreement. If circumstances require a change in such physical scope, the change must be approved by the District Committee, recorded in the District Committee's official meeting minutes, and provided to the Director for the execution of an amendment to this Agreement.

E. *Project Cost Overruns.* If the Recipient determines that the moneys granted pursuant to Section II, together with the Local Subdivision Contribution, are insufficient to pay in full the costs of the Project, the Recipient may make a request for supplemental assistance to its District Committee. Pursuant to Ohio Administrative Code Section 164-1-23, the Recipient must demonstrate that such funding is necessary for the completion of the Project and the cost overrun was the result of circumstances beyond the Recipient's control, that it could not have been avoided with the exercise of due care, and that such circumstances could not have been anticipated at the time of the Recipient's initial application. Should the District Committee approve such request, the action shall be recorded in the District Committee's official meeting minutes and provided to the Director for the execution of an amendment to this Agreement.

VI. **CONDITIONS TO FINANCIAL ASSISTANCE AND ITS DISBURSEMENT.** The Recipient must comply with the following before receiving funds:

A. Recipient certifies that the Local Subdivision Contribution necessary for the completion of the Project is available or expected to be available through the construction of the Project and must demonstrate its compliance with the provisions of Ohio Revised Code Chapter 164 and Ohio Administrative Code Chapter 164-1.

B. Recipient shall execute all other documents and certificates as deemed necessary by the Director, on the date hereof or at any time hereafter in connection with the financial assistance and disbursement of moneys pursuant to this Agreement, including any amendments to this

VII. REPRESENTATIONS, WARRANTIES AND COVENANTS OF RECIPIENT. Recipient represents warrants and covenants for the benefit of the Director as follows:

A. Recipient is a Local Subdivision of the State with all the requisite power and authority to construct, or provide for the construction of, and operate the Project under the laws of the State and to carry on its activities as now conducted.

B. Recipient has the power to enter into and perform its obligations under this Agreement and has been duly authorized to execute and deliver this Agreement.

C. This Agreement is the legal, valid and binding obligation of the Recipient, subject to certain exceptions in event of bankruptcy and the application of general principles of equity.

D. Recipient has complied with all procedures, prerequisites and obligations for Project application and approval under the Ohio Revised Code Chapter 164 and Ohio Administrative Code Chapter 164-1.

E. Recipient is not the subject of or has it initiated any claim or cause of action that would give rise to any liability which would in any way inhibit Recipient's ability to carry out its performance of this Agreement according to its terms.

F. Use of the Project - Qualified Service Contracts.

1. *General.* The Recipient shall not use the Project or suffer or permit the Project to be used for any Private Business Use. For purposes of the preceding sentence, use pursuant to a contract that satisfies the criteria of paragraphs 2 or 3 of this subsection shall not be regarded as a Private Business Use.

2. *Qualified Service Contracts.* A Service Provider includes any person that is a Related Party to the Service Provider and the phrase "Chief Executive Officer" includes a person with equivalent management responsibilities.

a. *Qualified Service Contracts - Rev. Proc. 2017-13.* Unless the Recipient chooses to apply the safe harbors described below in F.2.b. for Service Contracts (defined below) entered into before (and not materially modified after) August 18, 2017, an arrangement under which services are to be provided by a Private Person ("Service Provider") involving the use of all or any portion of, or any function of, the Project (for example, the management services for an entire facility or a specific department of a facility) ("Service Contract") is a "Qualified Service Contract" if either (A) the only compensation provided for in the Service Contract consists of reimbursements of actual and direct expenses paid by the Service Provider to persons other than Related Parties and reasonable related administrative overhead expenses of the Service Provider ("Expense Reimbursement") or (B) all of the following conditions are satisfied:

b. The compensation (including Expense Reimbursement) for services provided pursuant to the Service Contract (“Compensation”) is reasonable;

c. None of the Compensation (disregarding reimbursement of actual and direct expenses paid by the Service Provider to persons other than Related Parties, which for this purpose excludes employees of the Service Provider), including the timing of the payment thereof, is based on net profits from the operation of the portion of the Project with respect to which the Service Provider provides services (the “Managed Property”) or any portion thereof. Compensation will not be treated as providing a share of net profits if no element of the Compensation considers, or is contingent upon, either the Managed Property’s net profits or both the Managed Property’s revenues and expenses for any fiscal period. For this purpose, Compensation will not be treated as providing the Service Provider a share of the Managed Property’s net profits or requiring the Service Provider to bear a share of Managed Property’s net losses if the Compensation is: (i) based solely on a capitation fee, a periodic fixed fee, or a per-unit fee; (ii) incentive compensation that is determined by the Service Provider’s performance in meeting one or more standards that measure quality of services, performance, or productivity, and the amount and timing of the payment of the incentive compensation does not take into account (or is contingent upon) the Managed Property’s net profits; or (iii) a combination of the types of Compensation set forth in (i) and (ii);

d. The determination of the amount of Compensation and the amount of any expenses to be paid by the Service Provider (and not reimbursed), separately and collectively, do not consider either the Managed Property’s net losses or both the Managed Property’s revenues and expenses for any fiscal period;

e. The timing of the payment of Compensation is not contingent upon the Managed Property’s net losses or net profits. Deferral of the payment of Compensation will not be treated as contingent on the Managed Property’s net losses or net profits if the Service Contract includes requirements that: (i) the Compensation is payable at least annually; (ii) the Recipient is subject to reasonable consequences for late payment, such as reasonable interest charges or late payment fees; and (iii) the Recipient will pay such deferred Compensation (with interest or late payment fees) no later than the end of five years after the original due date of the payment of the Compensation;

f. The term of the Service Contract, including all renewal options, is no greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the Managed Property;

g. The Recipient must exercise a significant degree of control over the use of the Managed Property. This control requirement is met if the Service Contract requires the Recipient to approve the annual budget of the Managed Property, capital expenditures with respect to the Managed Property, each disposition of property that is part of the Managed Property, rates charged for the use of the Managed Property, and the general nature and type of use of the Managed Property (for example, the type of services);

h. The Recipient must bear the risk of loss upon damage or destruction of the Managed Property;

i. The Service Provider must agree that it is not entitled to and will not take any tax position that is inconsistent with being a Service Provider to the Recipient with respect to the Managed Property (e.g., the Service Provider will

not claim depreciation, amortization, or investment tax credit, or deduction for any payment as rent, with respect to the Managed Property); and

j. The Service Provider must have no role or relationship with the Recipient, directly or indirectly, that, in effect, substantially limits the Recipient's ability to exercise its rights under the Service Contract, based on all the facts and circumstances. A Service Provider will not be treated as having a role or relationship that substantially limits the Recipient's ability to exercise its rights under the Service Contract if:

(i) Not more than 20 percent of the voting power of the Governing Body of the qualified user in the aggregate is vested in the directors, officers, shareholders, partners, members, and employees of the Service Provider;

(ii) The Governing Body of the Recipient does not include the Chief Executive Officer of the Service Provider or the chairperson (or equivalent executive) of the Service Provider's Governing Body; and

(iii) The Chief Executive Officer of the Service Provider is not the Chief Executive Officer of the Recipient or any Related Party to the Recipient.

3. *Qualified Service Contracts - Rev. Proc. 97-13.* A Service Contract is considered to contain termination penalties if the termination limits the Recipient's right to compete with the Service Provider, requires the Recipient to purchase equipment, goods or services from the Service Provider, or requires the Recipient to pay liquidated damages for cancellation of the Service Contract. Another contract between the Service Provider and the Recipient (for example, a loan or guarantee by the Service Provider) is considered to create a contract termination penalty if that contract contains terms that are not customary or arm's length that could operate to prevent the Recipient from terminating the Service Contract. A requirement that the Recipient reimburses the Service Provider for ordinary and necessary expenses, or restrictions on the hiring by the Recipient of key personnel of the Service Provider are not treated as contract termination penalties.

If the Recipient chooses to apply the following safe harbors, a Service Contract is a Qualified Service Contract if entered into before (and not materially modified after) August 18, 2017 and all of the following conditions are satisfied:

a. The compensation for services provided pursuant to the Service Contract is reasonable;

b. None of the compensation for services provided pursuant to the Service Contract is based on net profits from operation of the Project or any portion thereof;

c. The compensation provided in the Service Contract satisfies one of the following subparagraphs:

(i) At least 95% of the compensation for each annual period during the term of the Service Contract is based on a periodic fixed fee and the term of the Service Contract, including all renewal options, does not exceed the lesser of 80% of the reasonably expected useful life of the Project and 15 years. For purposes of Section VII.F., a "periodic fixed fee" means a stated dollar amount for services rendered for a specified period of time that does not increase except for automatic increases

pursuant to a specified, objective external standard that is not linked to the output or efficiency of the Project (*e.g.*, the Consumer Price Index) and a “renewal option” means a provision under which the Service Provider has a legally enforceable right to renew the Service Contract but does not include a provision under which a Service Contract is automatically renewed for one-year periods absent cancellation by either party, even if such Service Contract is expected to be renewed; or at least 80% of the compensation for each annual period during the term of the Service Contract is based on a periodic fixed fee and the term of the Service Contract, including all renewal options, does not exceed the lesser of 80% of the reasonably expected useful life of the Project and 10 years; or

(ii) at least 50% of the compensation for each annual period during the term of the Service Contract is based on a periodic fixed fee, the term of the Service Contract, including all renewal options, does not exceed five years, and the Service Contract is terminable by the Recipient on reasonable notice, without penalty or cause, at the end of the third year of the Service Contract term; or

(iii) all of the compensation for services is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee, the term of the Service Contract, including all renewal options, does not exceed five years, and the Service Contract is terminable by the Recipient on reasonable notice, without penalty or cause, at the end of the third year of the Service Contract term; a “capitation fee” means a fixed periodic amount for each person for whom the Service Provider assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of service actually provided to covered persons varies substantially; or

(iv) all of the compensation for services is based on a per-unit fee or a combination of a per unit fee and a periodic fixed fee, the term of the Service Contract, including all renewal options, does not exceed three years and the Service Contract is terminable by the Recipient on reasonable notice, without penalty or cause, at the end of the second year of the Service Contract term; a “per-unit fee” means a fee based on a unit of service provided (*e.g.*, a stated dollar amount for each specified procedure) and generally includes separate billing arrangements between physicians and hospitals; or

(v) all of the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenue or expense fee, the term of the Service Contract, including all renewal options, does not exceed two years and the Service Contract is terminable by the Recipient on reasonable notice, without penalty or cause, at the end of the first year of the Service Contract term; this subparagraph (vi) applies only to (I) Service Contracts under which the Service Provider primarily provides services to third parties (*e.g.*, health care services) or (II) Service Contracts involving the Project during an initial start-up period for which there has been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues (or gross expenses in the case of a Service Contract based on a percentage of gross expenses) (*e.g.*, a Service Contract for general management services for the first year of operations), in which case the compensation for services may be based on a percentage of gross revenues, adjusted gross revenues (*i.e.*, gross revenues less allowances

for bad debts and contractual and similar allowances), or expenses of the Project, but not more than one of these measures; or

(vi) all the compensation for services is based on a stated amount, a periodic fixed fee, a capitation fee, a per-unit fee, or a combination of the preceding. The compensation for services also may include a percentage of gross revenues, adjusted gross revenues, or expenses of the Project (but not both revenues and expenses). The term of the Service Contract, including all renewal options, does not exceed five years, and the Service Contract need not be terminable by the Recipient prior to the end of the term. For purposes of this section, a tiered productivity award as described in section 5.02(3) of Internal Revenue Service Revenue Procedure 97-13, as amplified by Internal Revenue Service Notice 2014-67, will be treated as a stated amount or a periodic fixed fee, as appropriate.

d. The Service Provider has no role or relationship with the Recipient, directly or indirectly, that, in effect, substantially limits the Recipient's ability to exercise its rights under the Service Contract, including cancellation rights;

e. The Service Provider and its directors, officers, shareholders and employees possess in the aggregate, directly or indirectly, no more than 20% of the voting power of the Governing Body of the Recipient;

f. No individual who is a member of the Governing Body of the Service Provider and the Recipient is the Chief Executive Officer of the Recipient or the Service Provider or the chairperson of the Governing Body of the Recipient or the Service Provider; and

g. The Recipient and the Service Provider are not Related Parties.

4. *Exceptions.* The Recipient may treat a Service Contract that does not comply with one or more of the criteria of Section VII.F. as not resulting in Private Business Use of the Project if it delivers to the Director, at its expense, an opinion of Bond Counsel to the effect that such Service Contract does not result in Private Business Use of the Project and that entering into such Service Contract would not adversely affect the exclusion from gross income of the interest on the bonds that financed the Project or cause the interest on such bonds, or any portion thereof, to become an item of tax preference for purposes of the alternative minimum tax imposed under the Code.

G. *Use of Proceeds.* With respect to the Project to be financed or reimbursed by moneys granted pursuant to Section II:

1. The total cost of the Project shall not and will not include any cost which does not constitute "Costs of Capital Improvements Projects," as defined in Ohio Revised Code Section 164.01(F);

2. All the Project is owned, or will be owned, by the Recipient or another Tax-Exempt Organization, upon providing prior written notice to the Director, for as long as the loan is outstanding;

3. The Recipient shall not use any of the moneys to pay or reimburse the Recipient for the payment of or to refinance costs incurred in connection with the acquisition, construction, improvement and equipping of property that is used or will be used for any Private Business Use; and

4. The Recipient may engage in Private Business Use only if it delivers to the Director, at the Recipient's expense, an opinion of bond counsel that to do so would not adversely affect the exclusion of interest on the Infrastructure Bonds from gross income for federal income tax purposes and such opinion is accepted by the Director.

H. *General Tax Covenant.* The Recipient shall not take any action or fail to take any action which would adversely affect the exclusion of interest on the Infrastructure Bonds from gross income for federal income tax purposes.

I. *Sufficiency of Moneys.* The Recipient has sufficient moneys in addition to those granted to Recipient pursuant to this Agreement to fund the Project to completion, as its Local Subdivision Contribution.

J. *Construction Contract.* If federal funds are included as part of the financing of the non-OPWC portion of the Project, federal law may prevail, including, but not limited to, application of Davis Bacon prevailing wage rates, the Copeland "Anti-Kickback" Act, the Contract Work Hours and Safety Standards Act, and any federal environmental regulations. Recipient is solely responsible for ensuring compliance with federal requirements applicable to its Local Subdivision Contribution. Notwithstanding the above, the following provisions apply to construction contracts under this Agreement:

1. *Ohio Preference.* The Recipient shall, to the extent practicable, use and shall cause all its Contractors and subcontractors to use Ohio products, materials, services and labor in connection with the Project pursuant to Ohio Revised Code 164.05(A)(6);

2. *Domestic Steel.* The Recipient shall use and cause all its Contractors and subcontractors to comply with domestic steel use requirements pursuant to Ohio Revised Code 153.011;

3. *Prevailing Wage.* The Recipient shall require that all Contractors and subcontractors working on the Project comply with the prevailing wage requirements contained in Ohio Revised Code Sections 164.07(B) and 4115.03 through 4115.16;

4. *Equal Employment Opportunity.* The Recipient shall require all Contractors to secure a valid Certificate of Compliance;

5. *Construction Bonds.* In accordance with Ohio Revised Code 153.54, et. seq., the Recipient shall require that each of its Contractors furnish a performance and payment bond in an amount at least equal to 100% of its contract price as security for the faithful performance of its contract;

6. *Insurance.* The Recipient shall require that each of its construction contractors and subcontractors maintain during the life of its contract or subcontract appropriate Workers Compensation Insurance, Commercial General Liability, Public Liability, Property Damage and Vehicle Liability Insurance, and require Professional Liability Insurance for its professional architects and engineers; and

7. *Supervision.* The Recipient shall provide and maintain competent and adequate Project management covering the supervision and inspection of the development and construction of the Project and bear the responsibility of ensuring that construction conforms to the approved surveys, plans, profiles, cross sections and specifications.

VIII. PROGRESS REPORTS. The Recipient shall submit to the Director, at the Director's request,

summary reports detailing the progress of the Project pursuant to this Agreement and any additional reports containing such information as the Director may reasonably require

IX. **AUDIT RIGHTS.** The Recipient shall, at all reasonable times, provide the Director access and a right to inspect all sites and facilities involved in the Project and access to and a right to examine or audit all books, documents and records, financial or otherwise, relating to the Project or to ensure compliance with the provisions of this Agreement. The Recipient shall maintain all such books, documents and records for a period of six years after the termination of this Agreement, and such shall be kept in a common file to facilitate audits and inspections. All disbursements made pursuant to the terms of this Agreement shall be subject to all audit requirements applicable to State funds. The Recipient shall ensure that a copy of any final report of audit prepared in connection with and specific to the Project, regardless of whether the report was prepared during the pendency of the Project or following its completion, is provided to the Director within 10 days of the issuance of the report. The Recipient simultaneously shall provide the Director with its detailed responses to each negative or adverse finding pertaining to the Project and contained in the report. Such responses shall indicate what steps will be taken by the Recipient in remedying or otherwise satisfactorily resolving each problem identified by any such finding. If the Recipient fails to comply with the requirements of this Section or fails to institute steps designated to remedy or otherwise satisfactorily resolve problems identified by negative audit findings, the Director may bar the Recipient from receiving further financial assistance under Ohio Revised Code Chapter 164 until the Recipient so complies or until the Recipient satisfactorily resolves such findings.

X. **GENERAL ASSEMBLY APPROPRIATION.** The Recipient hereby acknowledges and agrees that the financial assistance provided under this Agreement is entirely subject to, and contingent upon, the availability of funds appropriated by the General Assembly for the purposes set forth in this Agreement and in Ohio Revised Code Chapter 164. The Recipient further acknowledges and agrees that none of the duties and obligations imposed by this Agreement on the Director shall be binding until the Recipient has complied with all applicable provisions of Ohio Revised Code Chapter 164 and Ohio Administrative Code Chapter 164-1 and until the Recipient has acquired and committed all funds necessary for the full payment of the local share applicable to the Project.

XI. **INDEMNIFICATION.** Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, good, or supplies of the Project sufficient to impose upon the Director any of the obligations specified in Ohio Revised Code 126.30. The Recipient shall indemnify and hold harmless the Director, the OPWC, the State and their respective officers, directors, members, agents and employees from any and all liability arising out of or pursuant to this Agreement, the Recipient's use or application of the funds being provided by the Director and the Recipient's construction or management of the Project.

XII. **TERMINATION.** The Director's and OPWC's obligations under this Agreement shall immediately terminate upon the failure of the Recipient to comply with any of the terms or conditions contained herein. Upon such termination, the Recipient shall be obligated to return any moneys delivered to the Recipient pursuant to the provisions of this Agreement.

XIII. **GOVERNING LAW.** This Agreement shall be interpreted and construed in accordance with the laws of the State. In the event any disputes related to this Agreement are to be resolved in a Court of Law, said Court shall be in the courts of Franklin County, State of Ohio.

XIV. **SEVERABILITY.** If any of the provisions of this Agreement or the application thereof to any person or circumstance shall for any reason or to any extent be held invalid or unenforceable, the

remainder of this Agreement and the application of this provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by Law.

XV. ENTIRE AGREEMENT. This Agreement and its Appendices and Attachments attached hereto contain the entire understanding between the parties and supersede any prior understandings, agreements, proposals and all other communications between the parties relating to the subject matter of this Agreement, whether such shall be oral or written.

XIV. CAPTIONS. Captions contained in this Agreement are included only for convenience of reference and do not define, limit, explain or modify this Agreement or its interpretation, instruction or meanings and are in no way intended to be construed as part of this Agreement.

XVII. NOTICES. Except as otherwise provided, any notices required shall be in writing and shall be deemed duly given when deposited in the mail, postage prepaid, return receipt requested, by the sending party to the other party at the addresses set forth below or at such other addresses as party may from time to time designate by written notice to the other party.

XVIII. NO WAIVER. If either party hereto at any time fails to require performance by the other of any provision of this Agreement, such failure in no way affects the right to require such performance at any time thereafter, nor shall the waiver by either party of a breach or default under any provision of this Agreement be construed to be a waiver of any subsequent breach or default under that provision or any other provision of this Agreement.

XIX. ACCEPTANCE BY RECIPIENT. This Agreement must be signed by the Chief Executive Officer and returned to and received by the Director prior to the disbursement of funds.

XX. ASSIGNMENT. Neither this Agreement or any rights, duties or obligations described herein shall be assigned by either party hereto without the prior written consent of the other party.

XXI. FACSIMILE SIGNATURES. Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or email. Each party hereto shall be entitled to rely upon a facsimile signature of any other party delivered in such a manner as if such signature were an original.

XXII. ETHICS/CONFLICT OF INTEREST. The Recipient, by signature on this Agreement, certifies that it has reviewed and understands the Ohio ethics and conflict of interest laws, and will take no action inconsistent with those laws.

XIII. NON-DISCRIMINATION. Pursuant to Ohio Revised Code 125.111 Recipient agrees that Recipient and any person acting on behalf of Recipient shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry against any citizen of this State in the employment of any person qualified and available to perform the work under this Agreement. Recipient further agrees that Recipient and any person acting on behalf of Recipient shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry.

XIV. COMPLIANCE WITH LAW. The Recipient, in expending the funds, agrees to comply with all applicable federal, State and local laws, rules, regulations and ordinances.

All of the above is agreed to and understood by the parties signed below. This Agreement for Project No. **CQ09W** is effective as of 07/01/2019.

RECIPIENT

STATE OF OHIO
Ohio Public Works Commission



Stephen Lutz, City Manager

Linda S. Bailiff, Director

City of Powell
47 Hall Street
Powell, OH 43065

Ohio Public Works Commission
65 East State Street, Suite 312
Columbus, OH 43215-4213

Appendix A

Project Completion Schedule, Administration Designation, Description

- 1) *Project Schedule.* Construction must begin within one year of 07/01/2019. Construction is scheduled to begin 08/01/2019 with completion by 11/30/2019. The Recipient may make a written request for an extension of the date to initiate construction, specifying the reasons for the delay and providing new construction start and completion dates. Requests may be approved by the Director providing that the Project can be completed within a reasonable time frame.
- 2) *Project Administration Designation.* The Project Administration Designation required by Section V.A. of this Agreement is designated by the Recipient as follows:

Stephen Lutz, City Manager to act as the Project Chief Executive Officer;
Debra Miller, Director of Finance to act as the Project Chief Fiscal Officer; and
Tiffany Jenkins, Senior Project Engineer to act as the Project Manager.

- 3) *Project Location & Description.* The Project, for which the provision of financial assistance is the subject of this Agreement, is hereby described as follows:

Location: This project will improve the intersection of Liberty Road and Seldom Seen Road. Improvements extend approximately 800 feet south and 500 feet north of the intersection along Liberty Road and 500 feet west along Seldom Seen Road.

Description: The project includes an intersection improvement, which includes widening of Liberty Road to account for a northbound left turn lane at the new traffic signal. Seldom Seen Road will also be widened to improve the existing eastbound right and left turn lanes. Improvements also include signage, striping, stormwater management, erosion control, and pedestrian facilities at the intersection to connect existing sidewalks and paths in the vicinity. See engineer's estimate in project application for approved bid items and quantities.

Appendix B

Local Subdivision Contribution, Disbursement Ratio, Project Financing and Expenses Scheme

1) *OPWC/Local Subdivision Participation Percentages*: For the sole and express purpose of financing/reimbursing costs of the Project, the estimated costs of which are set forth and described below, the Recipient hereby designates its Local Subdivision Percentage Contribution as amounting to a minimum total value of **54%** of the total Project Cost. The OPWC Participation Percentage shall be **46%** not to exceed **\$498,640**.

2) *Project Financing and Expenses Scheme*: The Recipient further designates the Project's estimated financial resources and estimated costs certified to the OPWC under this Agreement for the Project to consist of the following components:

a) PROJECT FINANCIAL RESOURCES:

i) Local In-Kind Contributions	\$0
ii) Local Public Revenue	\$292,680
iii) Other Revenue:	
- ODOT/FHWA	\$0
- OEPA/OWDA	\$0
- CDBG	\$0
- USDA	\$0
- Other	\$292,680
 SUBTOTAL	 \$585,360
 - Grant	 \$498,640
 SUBTOTAL	 \$498,640
 TOTAL FINANCIAL RESOURCES	 \$1,084,000

b) PROJECT ESTIMATED COSTS:

i) Engineering:	\$0
ii) Right-of-Way	\$0
iii) Construction	\$1,084,000
iv) Materials Purchased Directly	\$0
v) Permits, Advertising, Legal	\$0
vi) Construction Contingencies	\$0
 TOTAL ESTIMATED COSTS	 \$1,084,000

**Ohio Public Works Commission
Disbursement Request Form and Certification**

Disbursement Request Number: _____

Statement requesting the disbursement of funds from the OPWC pursuant to Section V of the Project Agreement(the "Agreement") executed between the Director of the Ohio Public Works Commission(the "Director") and City of Powell, Delaware County (the "Recipient"), dated 07/01/2019, for the sole and express purpose of financing the Capital Improvement Project defined and described in Appendix A of the Agreement(the "Project") and named and numbered as **CQ09W**.

EXPENDITURES PROGRESS:	(1) AS PER AGREEMENT	(2) PRIOR DISBURSED	(3) AS PART OF THIS DRAW	(4) PAID TO DATE (Column 2 + 3)
A) Engineering	\$0.00	\$ _____	\$ _____	\$ _____
B) Right-of-Way	\$0.00	\$ _____	\$ _____	\$ _____
C) Construction	\$1,084,000.00	\$ _____	\$ _____	\$ _____
D) Materials Purchased Directly	\$0.00	\$ _____	\$ _____	\$ _____
E) Permits, Advertising, Legal	\$0.00	\$ _____	\$ _____	\$ _____
F) Construction Contingencies	\$0.00	\$ _____	\$ _____	\$ _____
G) Total Expenditures	\$1,084,000.00	\$ _____	\$ _____	\$ _____

FINANCING PROGRESS:	(1) AS PER AGREEMENT	(2) PRIOR DISBURSED	(3) AS PART OF THIS DRAW	(4) PAID TO DATE (Column 2 + 3)
H) OPWC Funds	498,640	\$ _____	\$ _____	\$ _____
I) Local Share				
1) In-kind Contributions	\$0.00	\$ _____	\$ _____	\$ _____
2) Public Revenues	\$292,680.00	\$ _____	\$ _____	\$ _____
J) Other Revenue				
1) ODOT/FHWA	\$0.00	\$ _____	\$ _____	\$ _____
2) OEPA/OWDA	\$0.00	\$ _____	\$ _____	\$ _____
3) CDBG	\$0.00	\$ _____	\$ _____	\$ _____
4) USDA	\$0.00	\$ _____	\$ _____	\$ _____
5) Other	\$292,680.00	\$ _____	\$ _____	\$ _____
K) Total Local and Other Revenue	\$585,360.00	\$ _____	\$ _____	\$ _____
L) Total Financing (H+K)	\$1,084,000.00	\$ _____	\$ _____	\$ _____

[NOTE: Column totals for Line L must be equal to the column totals for Line G.]

Subdivision Name: City of Powell
Project Name: Liberty Road and Seldom Seen Road
OPWC Control No.: CQ09W

Disbursement Form - Page 2
Disbursement Request # _____

If this is a final request (to be marked on top of page 3) or if this disbursement uses the remainder of your assistance, your Project file will be closed upon processing this request. As described in Appendix B of the Project Agreement, your minimum Percentage Contribution is 54% of the total Project cost.

AUTHORIZED CERTIFICATIONS

Changes to Project officials must be submitted in writing.

PROJECT MANAGER CERTIFICATION:

I hereby certify that the work items invoiced and included herein are exclusively associated with the Project, have been completed in a satisfactory manner, and are otherwise in accord with the terms and conditions of the Agreement. This request reflects Project completion at an estimated _____%.

I certify that the information under this Disbursement Request Form and Certification is true and accurate, and that the work has been completed in accordance with the terms of the Agreement, including payment of the applicable prevailing wage rates. By signing below, I certify that the material suppliers, contractors and subcontractors have been paid in full for work performed and materials supplied pursuant to this Request.

Tiffany Jenkins, Senior Project Engineer

Date

Phone

CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER CERTIFICATION:

Pursuant to Section V. B. and V. C. of the Agreement, the undersigned Chief Executive Officer and Chief Fiscal Officer, as both are designated in Appendix A of the Agreement, hereby request the Director to disburse financial assistance moneys made available to Project in Appendix B of the Agreement (inclusive of any amendment thereto) to the payee as identified below in the amount so indicated which amount equals the product of the Disbursement Ratio and the dollar value of the attached cost documentation which was properly billed to the Recipient in exclusive connection with the performance of the Project. The undersigned further certify that:

- 1) Each item of Project cost documentation attached hereto is properly payable by the OPWC in accordance with the terms and conditions of the Agreement, and none of the items for which payment is requested has formed the basis of any payment heretofore made from the OPWC;
- 2) Each item for which payment is requested is or was necessary in connection with the performance of the Project;
- 3) In the event that any of the money disbursed to the Recipient pursuant to this request is to be used to pay Project costs based on an invoice submitted by a contractor of which the Recipient's share is yet to be paid, the Recipient shall expend such money to pay such contractor for the Project costs as soon as possible;
- 4) This statement and attachments hereto shall be conclusive as evidence of the facts and statements set forth herein and shall constitute full warrant, protection, and authority to the Director for any actions taken pursuant hereto; and
- 5) This document evidences the approval of the undersigned Chief Executive Officer and Chief Fiscal Officer of each payment hereby requested and authorized.

IN WITNESS WHEREOF, the undersigned have executed this Disbursement Request Form and Certification as of this _____ day of _____, _____.

Debra Miller, Director of Finance

Stephen Lutz, City Manager

CFO Phone: _____

Subdivision Name: City of Powell
Project Name: Liberty Road and Seldom Seen Road
OPWC Control No.: CQ09W

Disbursement Request # _____ /Circle if Final

CONTRACTOR/VENDOR PAYEE IDENTIFICATION:

Set forth the appropriate portion(s) of this Disbursement Request amount (all or part of the amount from H (3)) that is to be paid to each of the contractors/vendors (or Subdivision) identified below, and as are supported through accompanying copies of invoices or other evidence of expense. All information must be provided.

- 1) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY the OPWC \$ _____
PAYEE: _____
Address: _____
Phone: (_____) _____ - _____
Federal Tax ID #: _____

- 2) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY the OPWC \$ _____
PAYEE: _____
Address: _____
Phone: (_____) _____ - _____
Federal Tax ID #: _____

- 3) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY the OPWC \$ _____
PAYEE: _____
Address: _____
Phone: (_____) _____ - _____
Federal Tax ID #: _____

- 4) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY the OPWC \$ _____
PAYEE: _____
Address: _____
Phone: (_____) _____ - _____
Federal Tax ID #: _____

- 5) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY the OPWC \$ _____
PAYEE: _____
Address: _____
Phone: (_____) _____ - _____
Federal Tax ID #: _____

OPWC Use Only	
Approved by: _____	Date: _____
Reviewed by: _____	