



RESOLUTION 2022-38

A RESOLUTION AUTHORIZING THE CITY MANAGER TO PREPARE AND SUBMIT AN APPLICATION TO PARTICIPATE IN THE OHIO PUBLIC WORKS COMMISSION ("OPWC") STATE CAPITAL IMPROVEMENT AND/OR LOCAL TRANSPORTATION IMPROVEMENT PROGRAM(S) AND TO EXECUTE CONTRACTS AS REQUIRED FOR THE PROGRAM(S).

WHEREAS, the State Capital Improvement Program and the Local Transportation Improvement Program both provide financial assistance to political subdivisions for capital improvements to public infrastructure; and

WHEREAS, the City of Powell is planning to make capital improvements to Old Sawmill Road and Presidential Parkway by constructing a roundabout at the intersection; and

WHEREAS, the infrastructure improvement herein described is considered to be a priority need for the community and is a qualified project under the OPWC programs.

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

Section 1: That the City Manager is hereby authorized to apply to the OPWC for funds as described above.

Section 2: That the City Manager is further authorized to enter into any agreements as may be necessary and appropriate for obtaining this financial assistance, and to bind the City to any such agreements.

Section 3: This City Council finds and determines that all formal actions of the City Council and any of its committees concerning and relating to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this City Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

Section 4: This Resolution shall be in full force and effect immediately upon passage.

[Signature] 11-1-22
Daniel Swartwout Date
Mayor

[Signature] 11-1-22
Amy Deere Date
City Clerk

EFFECTIVE DATE: November 1, 2022

This legislation has been posted in accordance with the City Charter on this date 11-2-2022
[Signature] City Clerk

**COOPERATIVE PROJECT AGREEMENT
BETWEEN
DELAWARE COUNTY,
LIBERTY TOWNSHIP AND
THE CITY OF POWELL
FOR IMPROVEMENTS TO THE INTERSECTION OF
"OLD" SAWMILL ROAD AND PRESIDENTIAL PARKWAY**

This Agreement made by and between the Board of Commissioners of Delaware County ("County"), Liberty Township ("Township"), the City of Powell ("City") and the County Engineer, hereinafter known as the Parties to the Agreement;

WHEREAS, the Parties have determined the need to make safety improvements to the intersection of "Old" Sawmill Road and Presidential Parkway including construction of a single lane modern roundabout, resurfacing and revision of pavement markings on Presidential Parkway (the "Project"); and

WHEREAS, the Ohio Department of Transportation ("ODOT") has committed to providing federal highway funding through the Highway Safety Improvement Program (HSIP) toward the Project; and

WHEREAS, pursuant to Section 9.482 of the Ohio Revised Code, when legally authorized to do, a political subdivision may enter into an agreement with another political subdivision or a state agency whereby the contracting political subdivision or state agency agrees to exercise any power, perform any function, or render any service for the contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform or render; and

WHEREAS, the Parties desire to cooperate for the purpose of completing the Project;

WITNESSETH:

In consideration of the mutual benefits accrued the Parties hereby agrees as follows:

1 DEFINITIONS

1.1 The following definitions shall apply for the purposes of this Agreement:

1.1.1 **Construction.** The physical construction of the Project, and contract expenses thereof, undertaken pursuant to a competitively bid construction contract.

1.1.2 **Construction Engineering.** Advertisement, bidding, construction contract management, inspection and testing of materials performed by the County Engineer or a consulting engineer retained by the County to assist the County Engineer.

1.1.3 **Design Engineering.** Design engineering shall include preparation of surveys, plans, profiles, cross sections, reports, specifications and estimates for the Project.

1.1.4 **Eligible Costs.** Costs eligible for payment by ODOT under a separate project agreement relating to the Construction of the Project.

1.1.5 **Land Acquisition Services.** Title research, appraisals, negotiation, closing and recording services provided by the County Engineer or a competent consultant retained by the County to perform such services.

1.1.6 **Land Cost.** The cost of any property, right of way or easements necessary for the project, including the amount paid for the land but not including the cost of Land Acquisition Services necessary to acquire such land.

1.1.7 **Project.** The Project will consist of constructing a single-lane modern roundabout at the intersection of "Old" Sawmill Road (Township Road 119) and Presidential Parkway (Township Road 717), resurfacing and revision of pavement markings on Presidential Parkway between Sawmill Parkway and "Old" Sawmill Road, and ancillary roadway and drainage improvements necessary to complete the Project.

1.1.8 **Project Cost.** The costs for the Project attributable to and paid by the County, Township, and City respectively, exclusive of all Eligible Costs (paid by state (i.e. ODOT or OPWC) or federal monies) and Land Costs.

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 Township and County authorize 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 any necessary actions to complete the Project as contemplated by this Agreement. Such authority will not include approval of agreements or obligations upon any Party that would otherwise require County, Township or City approval except where specifically enumerated within this Agreement.

4 PROJECT CONSTRUCTION COSTS

4.1 **ODOT Costs:** Through a separate grant agreement, ODOT intends to provide 80% of the eligible Construction cost of the Project, up to a maximum of \$500,000 through its allocation of federal highway funds under the Highway Safety Improvement Program (HSIP).

4.2 **County:**

4.2.1 Up to a maximum County contribution of One Hundred Fifty Thousand Dollars (\$150,000), the County, through its Roadway Grant Assistance Program (RGAP), the procedures and requirements of which are hereby incorporated by reference, shall contribute three (3) Dollars for each one (1) Dollar paid by Liberty Township for Liberty Township's pro rata share of the Project Cost.

4.2.2 Up to a maximum County contribution of One Hundred Fifty Thousand Dollars (\$150,000), the County, through its Roadway Grant Assistance Program (RGAP), the procedures and requirements of which are hereby incorporated by reference, shall contribute three (3) Dollars for each one (1) Dollar paid by the City of Powell for the City of Powell's pro rata share of the Project Costs.

4.2.3 The County Engineer shall pay for all Design and Construction Engineering costs and Land Acquisition Costs using any funds appropriated to the County Engineer by the County available for such purpose.

4.3 **Township:** The Township will pay one-hundred percent (100%) of the Land Cost, not including Land Acquisition Services, for any parcel(s) located in the unincorporated areas of the Project, and will pay for seventy-five percent (75%) of any other Project costs not otherwise paid for.

The Township's share of the Land Cost, not including Land Acquisition Services, for any parcel(s) located in the unincorporated areas of the Project, and any other Project costs not otherwise paid for, shall not exceed the estimate set forth in Exhibit "A," a copy of which is attached hereto, unless expressly authorized by the Township. The estimated Land Cost, not including Land Acquisition Services, for any parcel(s) located in the unincorporated areas of the Project, and any other Project costs not otherwise paid for, is One Hundred Seventy Thousand Four Hundred Dollars (\$170,400). Any cost above One Hundred Seventy Thousand Four Hundred Dollars (\$170,400) shall be authorized and approved by the Township prior to the work being completed.

4.4 **City:** The City will pay one-hundred percent (100%) of the Land Cost, not including Land Acquisition Services, for any parcel(s) located in the City of Powell incorporated areas of the Project, and will pay for twenty-five percent (25%) of any other Project costs not otherwise paid for.

4.5 **Other Costs:** For the purposes of this Agreement, costs of any salaries, benefits and direct or indirect costs related to the performance of work by regular employees of the Parties on the Project will be borne by the respective Party.

5 ENGINEERING

5.1 The County Engineer will perform or procure all Design Engineering and Construction Engineering for the Project and will provide copies of design and construction documents to the other Parties if requested for review and comment.

5.2 The County Engineer will coordinate the design with the Parties as reasonably necessary to complete the Project and will act as the engineer-in-charge as may be required by ODOT under any state or federal regulations requiring the appointment of an engineer in responsible charge of the project.

5.3 The County Engineer will complete the Design Engineering for the Project at the earliest possible date following approval of this Agreement and notify the Parties at the time when such work is complete.

6 RIGHT OF WAY ACQUISITION

6.1 The County Engineer will perform or obtain services for Land Acquisition pursuant to the requirements of Chapter 163 of the Ohio Revised Code and any other applicable federal requirements.

6.2 Prior to making any good faith offer to acquire property for the Project, the County Engineer will provide copies of appraisals and the amount of the Fair Market Value Estimate (FMVE) to the Township and the City for review. If there are no comments or requests to amend the FMVE made in writing by the Township or City to the County Engineer within 14 days after the FMVE is provided to the Township and City respectively, the County Engineer will proceed to deliver the offers to affected property owners.

6.3 If the County Engineer is unable to acquire the necessary rights of way through good faith negotiation, the County Engineer will notify the respective Party with jurisdiction over the property and that Party will initiate appropriation proceedings pursuant to Chapter 163 of the Revised Code.

6.4 The Parties agree to 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.

6.5 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.

6.6 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:

6.6.1 All permanent right of way, including easement or fee simple interest will be acquired in the name and for the use of the "Board Trustees, Liberty Township, Delaware County, Ohio, and its successors in office forever"; and,

6.6.2 All temporary easements or work agreements, regardless of location, will be acquired in the name and for the use of the "Board Trustees, Liberty Township, Delaware County, Ohio".

7 UTILITIES

7.1 The County Engineer will coordinate and order relocation of facilities by authority granted in Ohio Revised Code Section 5547.03. The Parties agree to support such orders made by the County Engineer, if necessary, through applicable authority granted to each Party under Ohio Law.

7.2 For any reimbursable utility relocations, the County Engineer will provide a proper accounting of costs to be included in the Total Project Cost.

7.3 If required, the County Engineer 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 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 Township, 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 Parties for review when an invoice is submitted or otherwise whenever requested.
- 9.2 ODOT will pay for its share of Construction costs directly to the Construction contractor.
- 9.3 The County will pay for all other Construction costs initially and invoice the Township and the City for their respective shares of the Project up to four (4) times per year.
- 9.4 The Township and the City will pay approved invoices 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 Township will operate and maintain the Project Area.
- 10.2 The Township will maintain the completed street lights and pay all costs associated with supply of electrical energy.
- 10.3 The City will maintain all of the landscaping of the Project, including mowing, planting and pruning of vegetation and maintaining, repairing or replacing decorative rocks, mulch, edging, and related features.
- 10.4 The Township and City will cooperate in any other maintenance necessary for the Project pursuant to law or other 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 all Parties and no 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.

LIBERTY TOWNSHIP

By: Bryan Newell
Bryan Newell
Trustee Chair pursuant to Liberty Township
Resolution No. 22-1024-04

Date: 10-24-2022

Approved as to form for the Board of Liberty Township Trustees only:

Melissa A. Schiffel
Delaware County Prosecuting Attorney

**LIBERTY TOWNSHIP ONLY
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 this Agreement have been lawfully appropriated for such purpose and are in the township treasury or in the process of collection to the credit of an appropriate fund free from any other encumbrances. The Liberty Township Fiscal Officer also certifies that it has confirmed with the Ohio Auditor of State that Delaware County, Ohio and the City of Powell, Delaware County, Ohio have no unresolved findings for recovery pending or issued against them by the State of Ohio.

Rick Karr
Rick Karr
Liberty Township Fiscal Officer

P.R. #: _____

DELAWARE COUNTY ENGINEER

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

Date: _____

Approved as to form for the County Engineer only:

Melissa A. Schiffel
Delaware County Prosecuting Attorney

CITY OF POWELL

By: Andrew D. White
Andrew D. White City Manager

Date: 11/01/2022

Approved as to form for the City of Powell only:

Yazan Ashrawi
Yazan Ashrawi, Law Director
City Attorney

**CITY OF POWELL ONLY
FISCAL OFFICER'S CERTIFICATION (RC 5705.41(D)):**

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

Joan Chellie

P.R. #: _____

DELAWARE COUNTY

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

Approved as to form for the Board of County Commissioners only:

Aric I. Hochstetler
Staff Attorney, Delaware County Commissioners

**DELAWARE COUNTY ONLY
(BOARD OF COMMISSIONERS AND ENGINEER)
AUDITOR'S CERTIFICATION (RC 5705.41(D)):**

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

George Kaisa
Delaware County Auditor

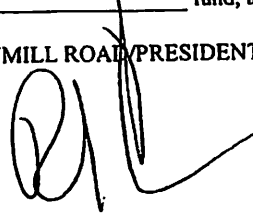
P.R. #: _____

CERTIFICATION OF LOCAL FUNDS

**LIBERTY Township
Old Sawmill Road/Presidential Parkway Improvements**

This 24th day of October, 2022.

I, Fiscal Officer of LIBERTY Township (Delaware County, Ohio) hereby certify that LIBERTY Township has the amount of \$170400.00 available in the Roads fund, and that this amount will be used to pay the local share of the project known as OLD SAWMILL ROAD/PRESIDENTIAL PARKWAY Improvements when it is required.



LIBERTY TOWNSHIP Fiscal Officer

ROAD	FROM	TO	MILES	ESTIMATE	% of RA	Local Share - City/Twp.	DCEO Share of Local (Actual)
Powell Local Share				\$179,600.00	25	\$44,900.00	\$134,700.00
Liberty Twp. Local Share				\$320,400.00	75	\$170,400.00	\$150,000.00
TOTAL(S) 2023				\$500,000.00			\$284,700.00

Estimate from Consultant = \$ 1,248,368.27 Cost Adj. for 2023= 15% \$1,435,623.51
 Mar-22 Round Up To - \$1,500,000.00

COST BREAKDOWN

LIBERTY TOWNSHIP	11.4%	\$170,400.00
CITY OF POWELL	3.0%	\$44,900.00
DELAWARE COUNTY	19.0%	\$284,700.00
OPWC	33.3%	\$500,000.00
ODOT	33.3%	\$500,000.00
PROJECT TOTAL:		\$1,500,000.00

The estimated useful life of the Presidential Parkway/"Old" Sawmill Road Project is 20 years.