



ORDINANCE 2024-11

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A DEVELOPMENT AGREEMENT WITH CSD POWELL, LLC, AN OHIO LIMITED LIABILITY COMPANY AND DECLARING AN EMERGENCY.

WHEREAS, the City desires to extend Scioto Street from Liberty Road to Grace Drive; and

WHEREAS, the City desires to reinvestment in the properties along the new extension of Scioto Street to create development opportunities and public benefits to City residents; and

WHEREAS, as part of this reinvestment efforts, the City desires to create additional public parking to serve the entire Downtown Powell district; and

WHEREAS, the City also desires to create a road that can be closed for events and activities in the downtown core; and

WHEREAS, CSD POWELL, LLC, an Ohio limited liability company ("COHatch") has purchased Delaware County Parcel Numbers 31942513055000 and 31942513056000 with plans to develop these parcels into a COhatch office building with rooftop bar, contingent upon certain off-site development and other improvements being completed; and

WHEREAS, to begin the process, the City and COHatch need preliminary design and engineering work for the COHatch project as well as the public infrastructure improvements on and around the COHatch parcels, and

WHEREAS, the public infrastructure improvements may include a road extension, lighting, public parking, utility extensions and relocation, stormwater improvements, public event space and park improvements; and

WHEREAS, COHATCH has committed to utilizing its design and engineering teams to complete the preliminary design and engineering of the public improvements, which shall be reviewed and approved by the City before any further action; and

WHEREAS, COHATCH wishes for the City to reimburse the costs associated with the preliminary design and engineering work as that work relates to the public improvements for the projects; and


WHEREAS, the City seeks to memorialize this partnership through a development agreement.

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

Section 1: That the City Manager is authorized to execute and enter into a Development Agreement with CSD POWELL, LLC, AN OHIO LIMITED LIABILITY COMPANY, in a form substantially similar to the agreement in the attached Exhibit A

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council and that all deliberations of Council and any of the decision making bodies of the City of Powell which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.


Section 3: That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that this Ordinance must be immediately effective to finalize economic development negotiations and allow for preliminary engineering to begin so that construction schedules may be maintained; wherefore, this Ordinance shall take effect and be in force from and after its passage.



Tom Counts
Mayor

3/24/24

Date

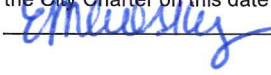


Elaine McCloskey
City Clerk

3/20/24

Date

EFFECTIVE DATE: _____, 2024

This legislation has been posted in accordance with the City Charter on this date 3/21/2024


City Clerk

Development Agreement

This Development Agreement (the "Agreement") is made by and between the **City of Powell, Ohio** (the "City"), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio and its Charter, with an office located at 47 Hall Street, Powell, Ohio 43065 and **CSD POWELL, LLC**, an Ohio limited liability company ("COHatch"). The City and COHatch may be referred to together as the "Parties" or individually as a "Party."

WITNESSETH:

WHEREAS, COHatch owns the certain property identified as Delaware County parcel numbers 31942513056000 and 31942513055000, which has a physical address of 50 E Olentangy Street, Powell, Ohio 43065 ("COHatch Property"); and

WHEREAS, COHatch acquired the COHatch Property to renovate it with a proposed multiuse facility consistent with the attached Exhibit A ("Proposed Facility") and with the intention to collaborate with the City and other private landowners to construct public parking facilities and other public utilities (together, the "Project"), which will result in the creation of entrepreneurial opportunities and economic development within the City; and

WHEREAS, more specifically, the Proposed Facility project includes, but is not limited to, the demolition of existing structures on the Property; construction, completion, and opening of the Proposed Facility; and

WHEREAS, the City and COHatch have separately entered into an Economic Incentive Agreement and a Community Reinvestment Area Agreement related to the Project; and

WHEREAS, the overall Project includes extending Scioto Street east to Grace Drive, construction of public parking facilities, necessary utilities, which would require the City to acquire certain property and property rights from private property owners ("Neighboring Parcels") when the final design of those public improvements and utilities are finalized; and

WHEREAS, to facilitate the Project simultaneously with COHatch's Proposed Facility, the Parties seek to work collaboratively for the efficient use of resources and exchange of consideration for the benefit of all Parties; and

WHEREAS, the City has determined that it would be in the best interest of the City and its residents to contract with COHatch to coordinate the preliminary engineering and design of the Project with the preliminary engineering and design of any private improvements in the area and to reimbursement COHatch for the same; and

WHEREAS, COHatch shall engage a design and engineering firm or consultants for the Project pursuant to a design contract that will be reviewed by the City for its approval ("Design Contract"); and

WHEREAS, this Agreement does not exempt COHatch from any requirement under the City's entitlement process, Codified Ordinances, or any other applicable law, nor does it guarantee COHatch approval of any plan, permit, or other entitlement; and

WHEREAS, the Design Contract shall address comprehensive preliminary design and engineering for the entire northeast quadrant of the intersection of Powell Road and Liberty Street; and

WHEREAS, COHatch will facilitate the ideas and maintain and consider the best interest of the Parties and surrounding properties.

NOW THEREFORE, for good and valuable consideration received, the receipt and sufficiency of which is hereby acknowledge, the Parties agree as follows:

I. Design and Engineering.

COHatch will be responsible for the preliminary design and engineering of the (1) public parking facility on the Powell Liberty Property; (2) the extension of Scioto Street from the intersection of N Liberty Street, through the City's parcels (Delaware County Parcel numbers 31942513067000, 31942513065000, and 31942513066000), and the Neighboring Parcels (Delaware County Parcel numbers 31942513054001 and 31942513051001), connecting to Grace Drive, which will include the relocation of various utilities (including, but not limited to, public utilities and fiber optics) ("Scioto Street Extension"); (3) the regional stormwater infrastructure needed for anticipated growth and development in the area; (4) pedestrian facilities and lighting adjacent to the Scioto Street Extension; and (5) other related public infrastructure as outlined in Exhibit B ("Public Infrastructure Improvements").

The Public Infrastructure Improvements shall be separated into three phases. The three phases shall be: (i) the regional stormwater infrastructure needed for anticipated growth and development in the area; (ii) public parking facility; and (iii) the Scioto Street Extension, pedestrian facilities and lighting adjacent to the Scioto Street Extension, and other public infrastructure related specifically to the Scioto Street Extension.

COHatch shall be responsible for retaining a design and engineering firm ("Consultants") to preliminarily design and engineer the Public Infrastructure Improvements. The City has the ultimate authority, however, to approve the Consultants, which such approval shall not be unreasonably withheld.

The City shall have approval authority on the design and engineering of the Public Infrastructure Improvements and shall be consulted throughout the design and engineering process. COHatch or the Consultants shall provide the City preliminary design and engineering documents, which the City shall review and provide feedback. Once the preliminary design and engineering documents are completed to the City's reasonable satisfaction, the City shall approve the same, and the Consultants shall determine if it will proceed to a construction engineering and drawings phase.

II. List of Exhibits

- A. Project Rendering
- B. Description of Public Infrastructure Improvements
- C. Depiction of Public Infrastructure Improvements
- D. Design Contract between Consultants and COHatch

III. Reimbursement of Design and Engineering Costs. The design and engineering for the following Public Infrastructure Improvements shall be completed by COHatch or the Consultants, in conjunction with the Project as described in Exhibit B and shown generally on Exhibit C, subject to the reimbursement terms below.

IV. Reimbursement Amount. The City shall reimburse COHatch for the actual costs it incurs for the preliminary design and engineering of the Public Infrastructure Improvements with a reimbursement not to exceed \$430,000.00. If COHatch believes the actual costs for the preliminary design and engineering work may exceed \$430,000.00, COHatch may stop work and consult with the City for further direction. In no instance shall payment from the City to COHatch exceed \$430,000.00 without prior written authorization from the City.

V. **Sources of Reimbursement.** The costs for design and engineering of the Public Infrastructure Improvements, which was identified in the City's Capital Improvement Plan (CIP), shall be reimbursed by the City using the available funds from the General Fund, or any other source the City deems acceptable.

VI. **Reimbursement Terms.**

- A. **Total Reimbursement.** Reimbursement for costs incurred by COHatch for the design and engineering of the Public Infrastructure Improvements shall be approved by the City, which such approval shall not be unreasonably withheld, conditioned, or delayed, and shall be in the amount of the actual costs. COHatch shall submit a request for reimbursement to the City on a monthly basis for the City's review and approval of the same.
- B. Request for reimbursement shall contain the following information:
 - a. Serial identifications of progress bills; *i.e.*, Progress Bill No. 1 for the first invoice, etc.;
 - b. The beginning and ending dates of the billing period;
 - c. A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- C. The City shall make payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. The City shall have 30 days from the receipt of a request for reimbursement that complies with all of the requirements above to reimburse COHatch.
- D. In no instance shall payment to COHatch exceed the Maximum Reimbursement without prior written authorization from the City.
- E. **Limits of Reimbursement.** Under the terms of this Agreement, COHatch understands and agrees that the City will only reimburse COHatch for actual costs associated with the design and engineering of the Public Infrastructure Improvements, which COHatch must prove and certify to the City, up to and not to exceed the Maximum Reimbursement.

VII. **Access to Property.** COHatch agrees to allow the Consultant, the City, and City representatives to access the COHatch Property for purposes of the preliminary design and engineering phase of the Project. The Consultant will meet with the Parties through the process, and upon completion of the preliminary design and engineering work, the Consultant will advise the Parties of the work.

VIII. **General Provisions.**

- A. **Breach and Opportunity to Cure.**
 - 1. **Breach.** The Parties agree that any material violations of or noncompliance with any of the terms and conditions of this Agreement shall constitute a breach of contract, and, subject to the notification and cure provisions outlined below, the Parties shall have the right to stop work forthwith and seek any and all remedies available at law or equity.
 - 2. **Opportunity to Cure.** Prior to any Party acting to stop its work in connection with an alleged breach of this Agreement, the non-breaching party shall provide a written notice to the breaching party, which written notice shall set forth the alleged material violations of, or noncompliance with, any material term(s) and condition(s) of this Agreement.

The breaching party shall have thirty (30) calendar days after receiving the written notice to cure the alleged breach. If the breach is not cured within that time period,

the non-breaching party may act to stop the breaching parties' work in connection with this Agreement and seek any and all remedies available at law or equity.

Notwithstanding the foregoing, if the nature of the breach is such that it cannot be reasonably cured within said thirty (30) calendar day period, then the breaching party may have a reasonable amount of time to cure, so long as the cure is commenced within said thirty (30) day period, is diligently prosecuted to completion thereafter, and provided that such additional time period is not averse to the general health, safety and welfare of the City as determined by the City Engineer.

- B. **Indemnification.** COHatch shall indemnify and hold harmless the City, and all of its elected officials, officers, employees and agents from and against all claims, losses, suits, actions and expenses (including reasonable attorneys' fees) that arise due to the wrongful or negligent performance or non-performance of COHatch, its contractors, subcontractors or its agents or employees, under the terms of this Agreement, including any and all proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any actions or omissions of any contractor, subcontractor or agent, from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor, subcontractor or its agents or employees. The Design Contract between Consultants and COHatch shall also include a similar provision wherein the Consultants shall indemnify and hold harmless the City, and all of its elected officials, officers, employees and agents.
- C. **Insurance.** COHatch shall require the Consultants to secure and maintain, at his/her/its own expense, errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim/annual aggregate to protect from any claim arising out of the performance of professional services and caused by negligent acts, omissions or negligent acts for which the Consultants may be legally negligent. The Consultants shall maintain said coverage for the entire contract period and for a minimum of one year after completion of the work under the Design Contract.
1. In addition to errors and omissions insurance, COHatch shall require the Consultants to secure and maintain, at its own expense, insurance for protection from claims under Worker's Compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and any other insurance prescribed by laws, rules, regulations, ordinances, codes or orders.
 2. COHatch shall require the Consultants to secure and maintain, at its own expense, General Liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.
 3. COHatch shall require the Consultants to secure and maintain, at the Consultants' own expense, property insurance for protection from claims or damages because of damage to or destruction of property including loss of use resulting therefrom in an amount not less than Five Hundred Thousand Dollars (\$500,000.00).
 4. The above referenced insurance shall be maintained in full force and effect during the life of this Agreement and the Design Contract and for one year beyond, where specified. The City may request that certificates showing that the Consultants is carrying the above referenced insurance in at least the above specified minimum at any time. All such Certificates, with the exception of those for Worker's

Compensation and Errors & Omissions coverage, shall clearly reflect that the City of Powell is an "Additional Insured".

- D. **Notices.** Any notices, statements, acknowledgements, consents, approvals, certificates or requests required to be given on behalf of either party to this Agreement shall be made in writing addressed as follows and sent by registered or certified mail, return receipt requested, and shall be deemed delivered when the return receipt is signed, refused or unclaimed:

If to the City to:

Andrew White, City Manager
City of Powell, Ohio
47 Hall Street
Powell, Ohio 43065
awhite@cityofpowell.us

With a copy to:

Frost Brown Todd LLP
Yaz Ashrawi, Law Director
One Columbus, Suite 2300
10 West Broad Street
Columbus, OH 43215
yashrawi@fbtlaw.com

If to COHatch to:

With Copy to:

or to any such other persons or addresses as may be specified by either party, from time to time, by prior written notification. Courtesy copies should also be sent via email to the email addresses included above.

- C. **Representations.** All representations and warranties of the Parties herein shall be binding upon the Parties, their successors and assignees, and shall survive the execution and delivery of this Agreement.

1. *COHatch Representations.* COHatch represents and warrants that the execution and delivery of this Agreement and the compliance by COHatch with all of the provisions herein (i) are within COHatch's authority and power; (ii) will not conflict with or result in any breach of any of the provisions of, or constitute default under, any agreement, its articles of organization or operating agreement, or other instrument to which COHatch, or any of its affiliates, is a party or by which it may be bound, or, to COHatch's knowledge, any license, judgment, decree, law, statute, order, rule or regulation or any court or governmental agency or body having jurisdiction over COHatch or any of its activities or properties; and (iii) have been duly authorized by all necessary action on COHatch's part.
2. *City Representations.* The City hereby represents and warrants that (i) execution of this Agreement has been authorized by Ordinance No. _____, passed by City

Council on _____ and (ii) the City has full power and authority to enter into this Agreement, to carry out its terms and to perform its obligations hereunder.

- D. **Waiver.** In the event that any covenant, agreement, or obligation under this Agreement is breached by any of the Parties and the breach is expressly waived thereafter by the non-breaching party, as the case may be, the waiver shall be limited to the particular breaches so waived and shall not be deemed to waive any other or any subsequent breach thereunder.
- E. **Severability.** In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason,
 - 1. that illegality or invalidity shall not affect the remainder hereof or thereof; any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,
 - 2. the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof; and
 - 3. each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.
- F. **Assignment.** Except as otherwise provided in this Section, this Agreement may not be assigned by any party hereto without the written consent of the other party which consent shall not be unreasonably withheld, conditioned, or delayed and which consent, if granted, may include reasonable provisions to protect the interest of the non-assigning party.
- G. **Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the Parties, their agents, employees, contractors, and subcontractors arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Delaware County, Ohio.
- H. **Captions.** The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections in this Agreement.

IN WITNESS WHEREOF, the parties, each by a duly authorized representative, have executed this Agreement on the dates below. This Agreement is effective on the date signed by City Manager as identified below.

City of Powell, Ohio

CSD POWELL, LLC

Andrew White
City Manager

Date

Date: _____

Approved as to Form:

Yazan S. Ashrawi
Law Director

DRAFT

CERTIFICATE OF AVAILABILITY OF FUNDS

I certify that the money required to meet the obligations of the City of Powell hereunder has hereby been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of this fund, free from any previous obligation or certification as required by Ohio Revised Code §5705.01 to §5705.47.

Date

Rosa Ocheltree, Finance Director

DRAFT

Exhibit A

DRAFT

Exhibit B

DRAFT

Exhibit C

DRAFT

Exhibit D

DRAFT