

RESOLUTION #17-1016-11

-- *Tabled* --

ACCEPTING HUNTER'S BEND STORM SEWER MAINTENANCE AGREEMENT

WHEREAS, storm sewer improvements have been installed under Hunter's Bend which cross boundaries of Liberty Township and the City of Powell, and

WHEREAS, in order to ensure efficient on-going maintenance of this storm sewer, staff recommends accepting the attached maintenance agreement with the City of Powell.

NOW, THEREFORE, BE IT RESOLVED BY THE LIBERTY TOWNSHIP TRUSTEES to accept and approve the attached "Hunter's Bend Storm Sewer Maintenance Agreement with the City of Powell and the Delaware County Commissioners.

Motion made by _____ and seconded by _____.

Vote: N/P Mrs. Eichhorn _____ Mrs. Leneghan _____ Dr. Mitchell

This Resolution shall be in force and become effective immediately upon its execution.

10-16-17

Date

Melanie Leneghan, Trustee

CERTIFIED BY:

Dr. Thomas Mitchell, Trustee

Nancy Denutte, Fiscal Officer

-- not present --
Shyra Eichhorn, Trustee

HUNTER'S BEND STORM SEWER MAINTENANCE AGREEMENT

This Agreement is made between the City of Powell, Ohio (the "City"), the Delaware County Commissioners, Delaware County, Ohio (the "County"), and the Liberty Township Trustees, Liberty Township, Delaware County, Ohio (the "Township") (individually "Party" and City, Township, and County collectively "Parties").

Whereas, storm sewer improvements which straddle the boundary between the City and the Township have been installed under Hunter's Bend ("Improvements") to service the Reserve at Scioto Glen development within the City of Powell; and,

Whereas, the Parties desire to provide consistent and efficient ongoing maintenance of the Improvements for the public health, safety, and welfare of the community.

Now Therefore, the Parties agree as follows:

- A. The City shall maintain the Improvements. This maintenance obligation shall not expire unless this Agreement is terminated as provided herein.
- B. In maintaining the Improvements, the City shall fully comply with all federal, state, and local statutes, rules, regulations, orders, and/or restrictions applicable to the Improvements.
- C. The County and Township have the option to make improvements to the Improvements if needed or desired as part of any development in adjacent Liberty Township, provided that such shall be coordinated through the City Engineer.
- D. The County shall advise the City in advance of any improvements to the segment of Hunter's Bend adjacent to the Improvements and may receive prior input from the City on any such improvements, but is not obligated to accept such input or obtain approval of the City prior to making any such improvements.

This Agreement may be terminated for convenience at any time and for any reason upon the mutual written agreement of all of the Parties or upon breach by any non-breaching Party, but only after the non-breaching Party provides notice of the breach to all other Parties and allows the breaching Party a reasonable opportunity to remedy the breach.

The Parties are political subdivisions of the State of Ohio and lack authority to indemnify. Therefore, each Party is and shall be responsible for their own actions, and/or the actions of their respective council members, board members, officers, employees, agents, representatives, and/or volunteers resulting from or related to the maintenance of the Improvements and/or the performance of this Agreement. In so doing, and to the extent permitted by law, the Parties agree to hold the other Parties harmless.

This Agreement does not require the expenditure of any County or Township funds.

The Parties agree that the goods, services, and benefits received by each Party pursuant to this Agreement are good and valuable consideration and that this Agreement is supported by sufficient good and valuable consideration. The Parties agree not to challenge this Agreement on the basis of a lack of consideration.

Revised Code (O.R.C.) § 9.24 prohibits the awarding of a contract to any party against whom the Auditor of the State has issued a finding for recovery if the finding for recovery is "unresolved" at the time of the award. By signing this Agreement, each Party warrants for itself that it is not now, and will not become the subject of an "unresolved" finding for recovery under O.R.C. § 9.24. The Parties respectively certify that there are no outstanding findings for recovery pending or issued against the Party by the State of Ohio.

All notices which may be required by this Agreement or by operation of any rule of law shall be hand delivered, sent via certified United States Mail, return receipt requested, or sent via a nationally recognized and reputable overnight courier, return receipt requested to the Parties at the addresses for the Parties listed in the signature block of this Agreement and shall be effective on the date delivered if by hand delivery or the date received if sent by certified mail or courier.

The provisions of this Agreement are severable and independent, and if any such provision shall be unenforceable in whole or in part, the remaining provisions and any partially enforceable provisions, to the extent enforceable, shall nevertheless be binding and enforceable.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

The Parties are authorized to enter this Agreement by, including, but not limited to, R.C. § 9.482 and, with respect to the City, Article XVIII, Section 3 of the Ohio Constitution.

This Agreement may be executed in counterparts.

This Agreement shall constitute the entire understanding and agreement between the Parties, shall supersede all prior understandings and agreements, whether written or oral, between the Parties relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the Parties.

The Parties acknowledge and agree that this Agreement is not effective until approved by formal action of the governing bodies of the respective Parties and shall only take effect upon such approval.

This Agreement is affirmed by the signatures of the following duly elected, appointed, and/or authorized officials of the Parties. Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign

this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and thereby bind the principal.

**BOARD OF TRUSTEES
LIBERTY TOWNSHIP
DELAWARE COUNTY, OHIO**

Tom Mitchell
Liberty Township Trustee

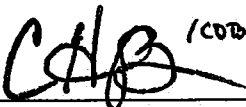
Date

Melanie Leneghan
Liberty Township Trustee

Shyra Eichhorn
Liberty Township Trustee

Board of Trustees
Liberty Township, Delaware County, Ohio
10104 Brewster Lane, Suite 125
Powell, Ohio 43065

Approved as to Form (Liberty Township):

 /COB

Carol Hamilton O'Brien (0026965)
Delaware County Prosecuting Attorney

LIBERTY TOWNSHIP FISCAL OFFICER'S CERTIFICATION (RC 5705.41(D)):

No actual funds are to be exchanged between the Parties in connection with this Agreement. No Fiscal Officer's Certification is required.

**BOARD OF COMMISSIONERS
DELAWARE COUNTY**

Barb Lewis
Delaware County Commissioner

Date

Jeff Benton
Delaware County Commissioner

Gary Merrell
Delaware County Commissioner

Board of Commissioners
Delaware County, Ohio
101 North Sandusky Street
Delaware, Ohio 43015

DELAWARE COUNTY ENGINEER

Chris Bauserman
Delaware County Engineer

Delaware County Engineer's Office
50 Channing Street
Delaware, Ohio 43015

Approved as to Form (Delaware County):

Carol Hamilton O' Brien (0026965)
Delaware County Prosecuting Attorney

AUDITOR'S CERTIFICATION (RC 5705.41(D)):

No actual funds are to be exchanged between the Parties in connection with this Agreement. No Auditor's Certification is required.

CITY OF POWELL

Stephen A. Lutz
City of Powell
City Manager

Date

City Council
City of Powell, Ohio
Powell Municipal Building
47 Hall Street
Powell, Ohio 43065

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