

**RESOLUTION #18-0220-07**

**Authorize Additional Expenditure for Liberty Road Trail**

**WHEREAS**, Liberty Township entered into a cooperative agreement with the City of Powell, per Resolution # 16-1017-08, to share the construction costs for a multi-use trail on Liberty Road north of Rutherford Road for which Liberty Township's portion would not exceed \$50,000, and

**WHEREAS**, additional expenses were incurred in excess of the original agreed upon amount, as detailed on the attached documentation.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF LIBERTY TOWNSHIP, DELAWARE COUNTY, OHIO** to authorize a payment in the amount of \$1,861.68 to the City of Powell for the Township's portion of additional expenses incurred for the construction of the Liberty Road/Rutherford Road multi-use trail, bringing the total expenditure for this project to \$51,861.68.

Motion made by Leneghan and seconded by Eichhorn.

**Vote:** yes Mrs. Eichhorn yes Mr. Gemperline yes Mrs. Leneghan

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

Feb. 20, 2018

Date

CERTIFIED BY:

Nancy Denutte  
Nancy Denutte, Fiscal Officer

Melanie Leneghan  
Melanie Leneghan, Trustee

Mike Gemperline  
Mike Gemperline, Trustee

Shyra Eichhorn  
Shyra Eichhorn, Trustee

CHANGE ORDER

(Liberty  
Township)

Order No: 2016-05  
Date: 10/4/2017  
Agreement Date: 7/25/2017

Name of PROJECT: 2016 Multi-Use Path Program  
OWNER: City of Powell, Ohio  
CONTRACTOR: Strawser Paving Company, Inc.

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification: Rutherford / Liberty Mting. CB #1 (\$1,500/Ea) + 38 LF (\$30/LF) of 12" RCP (Continuation of QuanRes from Base Ed)

Change to CONTRACT PRICE: \$ 7,095.00

Original CONTRACT PRICE: \$ 444,102.11

Current CONTRACT PRICE adjusted by previous  
CHANGE ORDER \$ 480,486.81

The CONTRACT PRICE due to this CHANGE ORDER will be (increased)  
(decreased) by: \$ 7,095.00

The CONTRACT PRICE amount INCLUDING this CHANGE ORDER: \$ 487,581.81

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by 0 calendar days.

The date for completion of all WORK will be 7/28/2017 (Date)

CONTRACTOR AGREES THAT THIS CHANGE ORDER SHALL CONSTITUTE A FINAL SETTLEMENT OF ALL MATTERS RELATING TO THE CHANGE IN THE WORK THAT IS THE SUBJECT OF THIS CHANGE ORDER, INCLUDING, BUT NOT LIMITED TO, ALL DIRECT, INDIRECT, AND CUMULATIVE COSTS ASSOCIATED WITH SUCH CHANGE AND ALL ADJUSTMENTS TO THE CONTRACT SUM AND THE DATE FOR SUBSTANTIAL COMPLETION.

Contractor's Signature: John Strawser

/City Engineer: John Strawser

City Manager: Gregory A. Johnson

Note: After all signatures are completed, copy goes to Finance and Engineer.

Over + 180d 108

## 2017 Pathway City/Township pathway project

Liberty Township Construction Cost	
<i>Item</i>	
201	\$750.00
202	\$300.00
203	\$12,000.00
203	\$600.00
659	\$444.00
614	\$750.00
204	\$1,594.00
204	\$150.00
448	\$15,000.00
304	\$9,310.00
608	\$1,340.00
<b>Total</b>	<b>\$42,238.00</b>
<i>Change Order #5</i>	\$7,095.00
<b>Total with Change Order</b>	<b>\$49,333.00</b>

Total project cost (Liberty and City of Powell)=	\$501,947.41
Total project cost( City of Powell)=	\$452,614.41
Total project cost( Liberty)=	\$49,333.00

Total Percentage of Cost(City )	90.17%
Total Percentage of Cost(Liberty )	9.83%

Total Inspection Fees	\$25,728.49
City share Inspection Fees	\$23,199.81
Liberty share Inspection Fees	\$2,528.68



City of Powell  
47 Hall Street  
Powell, OH 43065

July 25, 2017

Re: Powell 2016 Multi Use Path Program

To whom it may concern,

Below is a proposed price to profile mill the intersection of Rutherford Rd and Liberty St to meet the grade of new ADA Ramps.

Price Includes:  
186 SY – 1.5" Profile Pavement Planing  
Maintaining Traffic

**TOTAL CHANGE ORDER      ADD    \$2,715.00**

If I can answer any further questions, please call.

Thank you,

Clay Strawser  
Project Manager

**RESOLUTION #16-1017-08**

**Authorize Bidding process through City of Powell for construction costs**

**WHEREAS**, Liberty Township and the City of Powell have been cooperatively working on trail connectivity issues, and

**WHEREAS**, it will be most cost effective to collaborate on the construction bidding process with the City of Powell.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF LIBERTY TOWNSHIP, DELAWARE COUNTY, OHIO** to authorize the attached agreement between the City of Powell and Liberty Township to cooperatively bid for construction services through the bidding process being conducted by the City of Powell.

Motion made by Eichhorn and seconded by Leneghan.

**Vote:** yes Mrs. Eichhorn yes Mrs. Leneghan N/P Dr. Mitchell

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

10-17-16

Date

Shyra Eichhorn  
Shyra Eichhorn, Trustee

Melanie Leneghan  
Melanie Leneghan, Trustee

CERTIFIED BY:

Nancy Denutte  
Nancy Denutte, Fiscal Officer

-- not present --  
Dr. Thomas Mitchell, Trustee

**COOPERATIVE AGREEMENT  
BETWEEN  
THE CITY OF POWELL AND  
LIBERTY TOWNSHIP**

This Cooperative Agreement (this "Agreement") made by and between the City of Powell (the "City") and Liberty Township, Delaware County, Ohio (the "Township"), effective this \_\_\_ day of September 2016. The City and the Township are each sometimes referred to herein as a "Party" and, collectively, are sometimes referred to herein as the "Parties".

This Agreement shall be for the purpose of setting forth the respective obligations and commitments of the Parties to undertake certain pedestrian pathway improvements, including a pedestrian pathway in the unincorporated area of the Township along Liberty Road (the "Township Pathway"), which Township Pathway is more particularly depicted/described on the Township project description attached hereto as Exhibit A and incorporated herein by reference.

In consideration of the mutual benefit to each of the Parties, the Parties agree that:

1. With respect to the 2016 City of Powell/Liberty Township Pedestrian Pathway Improvements Project:
  - A. The proposed improvements will consist of the certain pedestrian pathway improvements detailed in plans and specifications on file in the office of the City Engineer and entitled "2016 City of Powell/Liberty Township Pedestrian Pathway Improvement Project" (the "Project"), including any approved modifications.
  - B. With respect to engineering of the pedestrian pathway improvements:
    - i. The Township has entered into a contract with CW Design to develop engineering for the Township Pathway. The Township shall pay the costs thereof.
    - ii. The City has also entered into a contract with CW Design to develop engineering for the remaining portions of the pedestrian pathway other than the Township Pathway. The City shall pay the costs thereof.
  - C. With respect to easement acquisition and utility relocation required in connection with Project:
    - i. The Township will administer all easement acquisition and utility relocation required for the Township Pathway. The Township shall pay the costs thereof.
    - ii. The City will administer all easement acquisition and utility relocation required for the remaining portions of the Project other than the Township Pathway. The City shall pay the costs thereof.
  - D. With respect to construction and construction administration required in connection with Project:
    - i. The City will advertise, accept bids, award the contract and administer the construction of the Project.
    - ii. The City will provide a bid summary to the Township for input as to the proposed contractor prior to contract award.
    - iii. The Township shall provide the Township Contribution (defined below) to the City upon award of the Project to pay for the estimated portion of the cost to construct the Township Pathway. The "Township Contribution" means an amount equal to \$40,300 (the engineers estimate of the cost of the Township Pathway), plus a pro rata portion of the cost of construction inspection services which the Parties agree is \$2,500 (10% of the estimated total construction inspection estimate of \$25,000).
    - iv. The City will solicit input and final approval from the Township on any construction issue and/or use of contingency funds that would increase the Township cost contribution to the Project.
    - v. Upon final completion of the Project, the City shall promptly provide to the Township a final

accounting of the actual costs of construction and inspection of the Township Pathway. In the event that the actual costs of the Township Pathway exceed the Township Contribution, the City will thereafter submit an invoice to the Township for reimbursement of the additional funds needed to complete the Township Pathway. Township shall pay such invoice within 30 days of receipt. In the event that the actual costs of the Township Pathway are less than the Township Contribution, the City will return the unused portion of the Township Contribution within 30 days of the final accounting.

2. Miscellaneous Provisions.

- a. Binding Effect. The provisions of this Agreement shall be binding upon the successors or assigns of the Parties.
- b. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.
- c. Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.
- d. Extent of Covenants: No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the Parties other than in his or her official capacity, and neither the members of the City Council nor any individual executing this Agreement on behalf of either the City or the Township shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements contained in this Agreement.
- e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterparts, disputes, and other matters in question arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Delaware County, Ohio.
- f. Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. Any process, pleadings, notice of other papers served upon the Parties shall be sent by registered or certified mail at their respective Notice Address, or to such other address or addresses as may be furnished by one Party to the other.

Notices shall be sent to the following Parties:

As to the City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As to the Township:

Liberty Township  
Board of Trustees & Township Administrator  
10104 Brewster Ln. #125  
Powell, OH 43065

g. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**FIRST AMENDMENT TO COOPERATIVE AGREEMENT BETWEEN**  
**THE CITY OF POWELL AND LIBERTY TOWNSHIP**

This First Amendment of the Cooperative Agreement Between the City of Powell and Liberty Township ("First Amendment") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by and between the City of Powell, Delaware County, Ohio ("City"), whose principal place of business is located at the Powell Municipal Building, 47 Hall Street, Powell, Ohio 43065 and the Board of Trustees, Liberty Township, Delaware County, Ohio ("Township"), whose principal place of business is located at 10104 Brewster Lane, Suite 125, Powell, Ohio 43065 (individually "Party," collectively, "Parties").

WHEREAS, the Parties entered into a Cooperative Agreement dated \_\_\_\_\_, 20 \_\_\_\_ (hereinafter "Agreement"); and,

WHEREAS, the Parties desire to add certain terms to the Agreement; and,

WHEREAS, the Agreement permits the Agreement to be amended by an instrument in writing executed by the Parties.

NOW THEREFORE, the Parties agree as follows:

1. **COMPETITIVE BIDDING.** The City shall advertise, accept bids, award the contract, and administer the construction of the Project in accordance with all applicable laws and regulations.
2. **TERMINATION.** 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.
3. **PARTIES RESPONSIBLE FOR THEIR OWN ACTIONS.** 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 Township Pathway 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.
4. **SUFFICIENT CONSIDERATION.** 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.

5. **WARRANTY AGAINST FINDINGS FOR RECOVERY.** 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.
6. **CONTRACT MAXIMUM.** The maximum amount payable pursuant to the Agreement is Fifty Thousand Dollars and Zero Cents (\$50,000.00).
7. **AUTHORITY.** The Parties are authorized to enter this Agreement by, including, but not limited to, R.C. § 9.482.
8. **SIGNATURES.** Any person executing the Agreement and this First Amendment in a representative capacity hereby warrants that he/she has authority to sign the Agreement and this First Amendment or has been duly authorized by his/her principal to execute the Agreement and this First Amendment on such principal's behalf and is authorized to bind such principal.
9. **CONFLICTS.** In the event of a conflict between the terms of the Agreement and this First Amendment, the terms of this First Amendment shall prevail.
10. **TERMS OF CONTRACT UNCHANGED.** All terms and conditions of the Agreement not changed by this First Amendment remain the same, unchanged, and in full force and effect.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands on the dates indicated below.

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

--not present--  
Tom Mitchell  
Liberty Township Trustee

October 17, 2016  
Date