

RESOLUTION NO. 19-18
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Belinda Kenley ON THE 19th DAY OF February, 2018.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COST PARTICIPATION AGREEMENT BETWEEN THE CITY OF CENTERVILLE AND WASHINGTON TOWNSHIP RELATING TO THE RESURFACING OF WEST SPRING VALLEY ROAD.

WHEREAS, the City of Centerville and Washington Township are jointly resurfacing West Spring Valley Road between South Main Street (SR 48) and Washington Church Road (the "Project"); and

WHEREAS, Washington Township is willing to be the lead agency and complete the resurfacing work for the Project; and

WHEREAS, each jurisdiction would be responsible for the construction cost associated with the roadway within its jurisdiction; and


WHEREAS, the parties are willing to enter into a Cost Participation Agreement to complete the Project.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1: That the City Manager be and is hereby authorized to enter into a Cost Participation Agreement between the City of Centerville and Washington Township in order to complete the resurfacing project on West Spring Valley Road. A copy of said Agreement is attached hereto and marked as Exhibit "A".


SECTION 2: This Resolution becomes effective at the earliest date allowed by law.

PASSED THIS 19th day of February, 2018.



Mayor of the City of Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

**WEST SPRING VALLEY ROAD RESURFACING PROJECT
COST PARTICIPATION AGREEMENT**

This **COST PARTICIPATION AGREEMENT** (the "Agreement") is entered into as of this ____ day of _____, 2018 (the "Effective Date") by and between the **CITY OF CENTERVILLE, OHIO**, an incorporated municipality with an address of 100 West Spring Valley Road, Centerville, Ohio 45458 (the "City") and **THE WASHINGTON TOWNSHIP BOARD OF TRUSTEES, MONTGOMERY COUNTY, OHIO**, a limited home rule township with an address of 8200 McEwen Road, Dayton, Ohio 45458 (the "Township") (the City and the Township are each referred to herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, the City and the Township desire to perform road resurfacing of the portion of West Spring Valley Road beginning at South Main Street (SR 48) and ending at Washington Church Road (the "Project");

WHEREAS, the Project will be performed partially within the Township's boundaries and partially within the City's corporate boundaries;

WHEREAS, the Parties desire to share in the cost of engineering and construction of the Project in accordance with the Cost-Sharing and Reimbursement Table attached hereto as Exhibit A;

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions set forth herein, the Parties hereby agree as follows:

1. RESPONSIBILITIES OF THE TOWNSHIP.

1.1 The Township shall develop all documents associated with the competitive bidding process for construction of the Project.

1.2 The Township shall be solely responsible for the performance of construction of the Project in both the Township and the City. Within a reasonable time prior to the projected start date of construction, the Township shall submit to the City for its review and approval all necessary construction documents for construction to be performed pursuant to the Project within the City's corporate boundaries, which such approval shall not be unreasonably withheld or delayed.

1.3 The Township shall be responsible for the performance and cost of construction engineering for only that portion of the Project which is to be performed within the Township's boundaries.

1.4 The Township shall finance the construction of the Project, subject to the City reimbursing the Township in accordance with Exhibit A for actual construction costs

and expenses incurred by the Township in performing construction pursuant to the Project within the City's corporate boundaries.

1.5 The Township shall maintain all records and documents associated with the Project in compliance with applicable laws and requirements that accompany the expenditure of public funds.

2. RESPONSIBILITIES OF THE CITY.

2.1 The City hereby authorizes the Township, its employees, agents, representatives, and contractors to perform all tasks and work required to complete the Project within the City's corporate boundaries. The City shall contract for construction materials testing for construction performed within the City and provide the Township with any and all necessary documentation to complete construction within the City within a reasonable time prior to the projected start date of construction.

2.2 The City shall be responsible for the performance and cost of construction engineering for only that portion of the Project which is to be performed within the City's corporate boundaries.

2.3 The City shall reimburse the Township in accordance with Exhibit A for actual construction costs and expenses incurred by the Township in performing construction pursuant to the Project within the City's corporate boundaries.

3. PAYMENT PROCEDURE.

3.1 The Parties agree and understand that the Estimated Costs of Construction Within the City's Corporate Boundaries, a copy of which is attached hereto as Exhibit A and is incorporated herein in its entirety, is only an estimate and the actual costs and expenses of construction pursuant to the Project may be higher or lower.

3.2 The City agrees to reimburse the Township for the actual costs and expenses of construction pursuant to the Project within the City's corporate boundaries in accordance with Exhibit A.

3.3 Within thirty (30) days of completion of the Project, the Township shall submit an invoice to the City reflecting the actual costs and expenses of construction pursuant to the Project within the City's corporate boundaries. The City shall approve the invoice and make full payment to the Township within thirty (30) days of receipt of the invoice. If the City does not approve the invoice for any reason, it shall provide the good-faith reason for disapproval to the Township in writing within thirty (30) days of receipt of the invoice.

3.4 In the event the City does not make full payment to the Township, and fails to provide a good-faith reason for disapproval of the invoice in writing within thirty (30) days following receipt of the invoice, the invoice shall be deemed approved and the City

shall be deemed to have waived all right to contest the invoice. Full payment must be made to the Township no later than seven (7) days after the invoice is deemed approved.

4. DISPUTE RESOLUTION.

4.1 The Parties agree to use good-faith efforts to resolve any dispute arising out of, or relating to, this Agreement. If the Parties are unable to resolve a dispute, the Parties agree to submit the dispute to non-binding mediation, conducted by a mutually selected mediator, prior to initiating litigation or any other dispute resolution process. If the Parties cannot agree to a mediator, each Party shall select a mediator and the two selected mediators shall select a third mediator to hear the dispute.

4.2 If the Parties dispute the actual costs and expenses of construction reflected in the invoice submitted hereunder and the dispute cannot be resolved within sixty (60) days following the date of the City's initial receipt of the invoice, the Parties agree to submit the issue to mediation.

4.3 The Parties agree that each Party shall pay fifty percent (50%) of the mediator's fees and costs.

5. AGREEMENT TERM.

This Agreement shall commence on the Effective Date and shall terminate on December 31, 2018.

6. EARLY TERMINATION.

6.1 This Agreement may be terminated early by either Party upon sixty (60) days' written notice delivered to the other Party.

6.2 In the event of early termination, the City shall reimburse the Township for the full costs and expenses of construction performed within the City's corporate boundaries that the Township has incurred from the Effective Date through the date of termination of this Agreement.

7. SEVERABILITY.

If any provision of this Agreement, or the application of that provision to any persons or circumstances, shall, to any extent, be invalid or unenforceable under applicable law, the remainder of this Agreement, or the application of such provision to other persons or circumstances, shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8. NOTICES.

All notices, demands, requests, consents, approvals and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be sent by certified mail with return receipt requested, or by nationally known overnight courier if such courier provides a record as to the date of delivery, in each case with postage or delivery fees prepaid and addressed to each Party at the addresses set forth above or to such other address as either Party may designate from time-to-time pursuant to notice provided under this Section 8.

9. COUNTERPARTS.

This Agreement may be executed in two (2) or more counterparts, all of which shall be read together and be construed as one instrument. A facsimile or PDF copy of a signature shall be as binding as an original signature.

10. NO ASSIGNMENT.

Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

11. NO RECORDATION.

This Agreement shall not be recorded by either Party.

12. AMENDMENT.

This Agreement may not be modified, altered or amended in any manner except by a written agreement executed by both Parties.

13. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes any prior representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, between the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

WITNESS:

CITY OF CENTERVILLE, OHIO

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

CERTIFICATION OF FUNDS:

Municipal Attorney

Finance Director

WITNESS:

**THE WASHINGTON TOWNSHIP
BOARD OF TRUSTEES,
MONTGOMERY COUNTY, OHIO**

By: _____

Name: _____

Title: _____

CERTIFICATION OF FUNDS:

Finance Director

EXHIBIT A

Cost-Sharing and Reimbursement Table

Project Component	Estimated Costs of Work Within the City's Corporate Boundaries	Local Funds	Other Sources of Funds	The City's Reimbursement to the Township
Construction Engineering	\$1,000.00	\$1,000.00	n/a	0% The City shall perform construction engineering for the portion of the Project within the City's corporate boundaries and will pay all costs associated with such construction engineering.
Construction	\$200,000.00	\$200,000.00	n/a	100% The City shall reimburse the Township for all costs and expenses of construction within the City's corporate boundaries.

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