

RESOLUTION NO. 29-17
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bill Seave ON
THE 19th DAY OF June, 2017

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF CENTERVILLE AND CITY OF KETTERING RELATING TO THE HEWITT AVENUE BIKEWAY CONNECTOR PROJECT, PID NO. 105751

WHEREAS, the City of Centerville and the City of Kettering, are jointly acquiring rights of way and constructing shared use path/bikeway improvements to Whipp Road from Iron Horse Trail to Hewitt Avenue, Hewitt Avenue from Whipp Road to Bigger Road, and Bigger Road from Hewitt Avenue to 300' south of Hewitt Avenue; and

WHEREAS, the City of Kettering is willing to enter into an Agreement with the City of Centerville to be the lead agency and complete right of way acquisition, utility relocation, and construction work for the Project, Hewitt Avenue Bikeway Connector Project; and

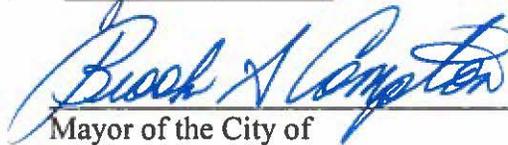
WHEREAS, the City of Kettering has applied for and received Federal Transportation Alternatives Program (TA Funds) funding, which will be used to offset cost of said Project; and

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1: That the City Manager be and is hereby authorized to enter into an Agreement between the City of Centerville and City of Kettering in order to complete acquisition of right of way and construction of improvements on Whipp Road, Hewitt Avenue and Bigger 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 June, 2017.



Mayor of the City of
Centerville, Ohio

ATTEST:

Carin R. Andrews

Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 29-17, passed by the Council of the City of Centerville, Ohio on the 19th day of June.

Carin R. Andrews

Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

**HEWITT AVENUE BIKEWAY CONNECTOR
PROJECT NO. 05-004H
COST PARTICIPATION AGREEMENT**

THIS AGREEMENT is entered into between the City of Centerville, Ohio, ("Centerville") and the City of Kettering, Ohio, ("Kettering") and is effective as of the date the last party signs below.

WITNESSETH:

WHEREAS, the shared use path, known as the "Iron Horse Bike Trail," terminates on the north side of Interstate 675, approximately two-thirds of a mile south of the border of Centerville and Kettering; and

WHEREAS, Centerville and Kettering desire to extend the Iron Horse Bike Trail south of Interstate 675 in Centerville by means of constructing a shared use path/bikeway connector to the existing path on the east side of the Bigger Road bridge over Interstate 675 (the "Hewitt Avenue Bikeway Connector"); and

WHEREAS, Centerville and Kettering desire to construct the Hewitt Avenue Bikeway Connector so that it begins at the intersection of the Iron Horse Bike Trail and Whipp Road, then continues east along Whipp Road and Hewitt Avenue, then turns south on Bigger Road, and then crosses Bigger Road in Centerville, where it will end (the "Project"); and

WHEREAS, Centerville and Kettering desire to share in the cost of construction plan development, acquisition of right-of-way, construction engineering, and construction of the Project, and

WHEREAS, the Parties have agreed that Kettering will be the lead agency on the Project; and

WHEREAS, Kettering has secured federal funding through the Transportation Alternatives Program ("TA Funds") to fund portions of the Project; and

WHEREAS, the Parties agree to split the Project costs in accordance with the percentages stated in Exhibit A, which is attached to this Agreement and incorporated herein; and

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereby agree as follows:

ARTICLE ONE: Scope of Services (Kettering)

Kettering will develop all construction plans, acquire all necessary right-of-way in Kettering, perform all construction engineering for that portion of the Project located within the Kettering corporate boundaries, and arrange for the construction of the Project. Kettering will finance the Project, the estimated cost of which is listed in Exhibit A. Kettering agrees to have the construction drawings for the Centerville portion of the Project reviewed and approved by Centerville.

Centerville authorizes Kettering or Kettering's agents and contractors to perform all tasks and work required of the Project within the Centerville corporate boundaries. Kettering will maintain project records to document compliance with applicable requirements that accompany the use of Federal funds.

ARTICLE TWO: Scope of Services (Centerville)

Centerville agrees to reimburse Kettering in accordance with the reimbursement percentages listed in Exhibit A for the Improvements. Centerville will provide Kettering with reports for inspections and materials testing performed in Centerville to meet ODOT requirements. Centerville will perform construction engineering of the portion of the Project located within the Centerville corporate boundaries per ODOT requirements. Centerville will pay for said construction engineering and will not request to be reimbursed from TA Funds. Centerville will contract for materials testing for the Improvements located within the Centerville corporate boundaries per ODOT requirements. If additional right-of-way is required in Centerville for the Project, Centerville will cooperate with Kettering to acquire such additional right-of-way. The cost to acquire such right of way will be split between the Parties in accordance with Exhibit A. Centerville will provide all necessary documents to Kettering to complete the Project.

Kettering will invoice Centerville in two installments. The first invoice shall be for the costs associated with construction plan development and acquisition of right-of-way, and the second invoice shall be for the costs associated with construction of the Project. Kettering shall submit the invoices with documentation regarding the costs and expenses associated with the Project and Centerville's percentage of such costs and expenses. Payment of the invoice shall be made within 30 days after approval of the invoice by Centerville. If Centerville fails to approve the invoice, or comment in writing with a detailed explanation of disapproval, within 30 days following the date of Kettering's submission of the invoice to Centerville, then the costs and expenses submitted by Kettering shall be deemed approved. If Kettering and Centerville cannot mutually agree to actual costs and expenses within 60 days following the date of initial submission of actual costs and expenses by Kettering to Centerville, then the parties agree to submit the same matter to a mediator, mutually agreed upon by the parties, with an attempt to reach agreement within 45 days. Each party will bear its own mediation costs and each party will pay 50% the mediator's fees. Federal funding for the Project will be allocated as set out in Exhibit A, attached hereto and incorporated herein.

ARTICLE THREE: Term

The term of this Agreement shall commence on the date of the execution by all parties and shall terminate on December 31, 2023.

ARTICLE FOUR: Modification and Severability

This Agreement constitutes a total integration of the entire understanding between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties.

If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

ARTICLE FIVE: Termination

This Agreement may be terminated by either party upon notice, in writing, delivered to the other party at least sixty (60) days prior to the effective date of termination. In case of termination, Centerville

shall reimburse Kettering for all costs for work performed up to the effective date of termination after application of federal funding through the date of termination.

IN WITNESS WHEREOF, the parties hereto set their hands this _____ day of _____, 2017.

WITNESS:

CITY OF KETTERING, OHIO

Signature

By _____
Signature

Print Name _____

Title _____

APPROVED AS TO FORM:

CERTIFICATION OF FUNDS:

Law Director

Finance Director

WITNESS:

CITY OF CENTERVILLE, OHIO

Signature

By _____
Signature

Print Name _____

Title _____

APPROVED AS TO FORM:

CERTIFICATION OF FUNDS:

Law Director

Finance Director

EXHIBIT A

Project Component	Estimated Total Cost	TA Funds Project Allocation	Local Funds Project Allocation	Centerville Reimbursement % to Kettering
Construction Plan Development	" \$30,000.00	None	" \$30,000.00	50% of the actual total cost to develop construction plans
Acquisition of ROW	" \$25,000.00	None	" \$25,000.00	50% of the actual total cost to acquire right-of-way.
Construction Engineering	" \$26,800.00	" \$13,400.00	" \$13,400.00	0% Centerville shall perform construction engineering for the portion of the Project within the Centerville corporate boundary and will pay all costs associated with such construction engineering.
Construction	" \$670,000.00	" \$335,000.00	" \$335,000.00	50% of Local Funds Project Allocation

*Costs listed in the table above are estimates and not actual costs of the Project. However, Kettering shall invoice Centerville in accordance with the actual costs of the Project, and Centerville shall reimburse Kettering in accordance with the percentages listed in the table above for the actual costs of the Project.