

**RESOLUTION NO. 42-24**  
**CITY OF CENTERVILLE, OHIO**

SPONSORED BY COUNCILMEMBER JoAnne Rau ON THE 15<sup>th</sup>  
DAY OF April, 2024.

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A COST SHARING AGREEMENT WITH THE BOARD OF EDUCATION OF THE CENTERVILLE CITY SCHOOL DISTRICT ASSOCIATED WITH THE PURCHASE OF APPROXIMATELY SIX ACRES OF VACANT LAND PLUS OR MINUS LOCATED IN THE CITY OF CENTERVILLE AND CONSTRUCTION OF A ROAD CONNECTING CENTERVILLE HIGH SCHOOL WITH CLYO ROAD.**

WHEREAS, Council and the Board of Education of the Centerville City School District previously entered into an Agreement for Purchase and Sale of property dated June 9, 2022; and

WHEREAS, said Agreement was amended on or about May 19, 2023, and August 28, 2023; and

WHEREAS, said Agreement is intended to be amended a third time to address further financial aspects of the construction of the road connecting Centerville High School with Clyo Road; and

WHEREAS, the parties desire to enter into a cost sharing agreement with the school district upon terms and conditions acceptable to both parties; and

WHEREAS, Council has the power to enter into such real property purchase agreement and cost sharing agreements by virtue of its Charter and the provisions of Article VIII, Section 16 and Article XVIII, Section 3 of the Ohio Constitution.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1: That the City Manager is hereby authorized to execute on behalf of the City, the Cost Sharing Agreement with the Board of Education of the Centerville City School District for the construction of a road connecting Centerville High School with Clyo Road located in the city of Centerville upon terms and conditions substantially similar to those terms set forth in the agreement, marked as Exhibit "A" and incorporated herein.

Section 2: That this resolution shall go into effect at the earliest time allowed by law.

PASSED THIS 15<sup>th</sup> day of April, 2024.

  
\_\_\_\_\_  
Mayor of the City of Centerville, Ohio

ATTEST:

  
\_\_\_\_\_  
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. 42-24, passed by the Council of the City of Centerville, Ohio on the 15<sup>th</sup> day of April, 2024.

  
\_\_\_\_\_  
Clerk of the Council

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

**COST SHARING AGREEMENT**

**THIS COST SHARING AGREEMENT** (this “Agreement”) is effective as of the \_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), by and between the **BOARD OF EDUCATION OF THE CENTERVILLE CITY SCHOOL DISTRICT**, Montgomery County, Ohio, a city school district and political subdivision of the State of Ohio (“CCS”), and the **CITY OF CENTERVILLE, OHIO**, a City and political subdivision in and of the State of Ohio (the “City”).

**RECITALS**

**WHEREAS**, pursuant to an Agreement for Purchase and Sale entered into by and between CCS and the City dated June 9, 2022 (as amended, the “Purchase Agreement”), the City purchased certain real property from CCS (the “Purchased Property”) for the purpose of constructing a public roadway over and from land owned by CCS to Clyo Road as generally depicted on the Right-of-Way Dedication Plan and the Plan and Profile, attached hereto as Exhibit A and Exhibit B, respectively (the “Public Improvements”); and

**WHEREAS**, the City will construct the Public Improvements, and CCS has agreed to pay a portion of the Phase 1 Costs (defined below) in accordance with the terms and conditions contained herein.

**NOW, THEREFORE**, for valuable consideration paid, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals Incorporated/Defined Terms.** The foregoing recitals are incorporated herein by this reference as if set forth herein. Unless otherwise defined herein or unless the context clearly requires a different meaning, the capitalized and non-capitalized words and phrases defined in the Purchase Agreement which are used in this Agreement shall have the same meaning ascribed to them in the Purchase Agreement.

2. **Phases.** The City shall complete the construction of the Public Improvements in two (2) phases – “Phase 1” and “Phase 2”.

a. Phase 1 is estimated to be completed on or before December 31, 2025. The scope of work for Phase 1 includes the construction of an extension of Dimco Way from Clyo Road to and over CCS’s land. Specifically, the improvements will include 2,200 feet of new roadway, storm sewer improvements, bike path, temporary traffic signal at the intersection of Dimco Way and Clyo Road, and landscaping improvements as set forth in the Landscaping Plan, attached hereto as Exhibit C.

b. Phase 2 is estimated to be completed on or before December 31, 2028. The scope of work for Phase 2 includes improving (i) the section of Clyo Road that runs between St. Leonard Way and Quaker Way, and (ii) approximately 100 feet on Dimco Way not otherwise included in Phase I. Improvements include permanent traffic signalization, storm sewers, bikeway, and widening of roadways. Notwithstanding anything contained herein to the contrary, CCS shall not be responsible for any costs associated with the Phase 2 Public Improvements.

This Agreement applies to the costs and expenses associated with Phase 1 (the “Phase 1 Costs”). CCS shall not be responsible for any costs and expenses associated with Phase 2, and any costs and expenses related to Phase 2 shall be borne by the City. The estimated completion dates for each Phase are for estimation purposes only, and the City is not obligated to complete the Public Improvements by such dates subject, however, to CCS’s reverter rights as set forth in the Purchase Agreement.

3. **Cost Participation.** CCS hereby agrees to the following:

a. If the Capital Fund Dollars (hereinafter defined) are received by the City, CCS hereby agrees to contribute one-half (1/2) of the Phase 1 Costs, which contribution shall be adjusted by (i) a credit in the amount of \$373,086.00, and (ii) a credit in the amount of one-half (1/2) of the Capital Fund Dollars.

b. If the Capital Fund Dollars are not received by the City, CCS agrees to contribute one-half (1/2) of the Phase 1 Costs, which contribution shall be adjusted by (i) a credit in the amount of \$373,086.00, and (ii) a charge in the amount of \$250,000.00 (the “Capital Fund Dollars Deficit”) to make up the budget deficit created by the State of Ohio’s denial of the Capital Fund Dollars.

The credits set forth in Section 3.a. and 3.b. above (collectively, the “Phase 1 Cost Credits”) are credits only.

Notwithstanding anything contained herein to the contrary, in no event shall CCS be obligated to contribute more than \$1,016,914.00 towards the Phase 1 Costs, and the parties acknowledge that CCS’s obligation to pay the City one-half (1/2) of the Phase 1 Costs is capped at such amount (the “Phase 1 Costs Cap”).

CCS shall pay its portion of the Phase 1 Costs in accordance with Section 4 below. In no event shall the City be required to pay CCS any excess funds in the event the Phase 1 Cost Credits exceed CCS’s share of the Phase 1 Costs.

The term “Capital Fund Dollars” means funds that are provided to the City through the State of Ohio’s capital fund to be used for the Phase 1 Public Improvements. Notwithstanding anything contained herein to the contrary, the Capital Fund Dollars are not guaranteed. The State of Ohio has sole discretion in deciding whether to provide capital funds for public improvements.

4. **Payment of CCS’s Portion of the Phase 1 Costs; Disputes.** The City shall provide to CCS an invoice for CCS’s share of the Phase 1 Costs, which invoice shall include documentation for all Phase 1 Costs. Subject to the terms and conditions contained in Sections 3.a and 3.b herein, the invoice amount for the Phase 1 Costs will include any of the Phase 1 Cost Credits and if applicable, The Capital Fund Dollars Deficit. CCS hereby agrees to pay its share of the Phase 1 Costs in accordance with the following:

a. If the Capital Fund Dollars are received by the City, then CCS, within thirty (30) days of the receipt from the City of an invoice for CCS’s share of the Phase 1 Costs, shall pay the invoice (up to the Phase 1 Costs Cap). Notwithstanding the foregoing, payment for CCS’s share of Phase 1 Costs shall not be due before August 1, 2025.

b. If the Capital Fund Dollars are not received by the City, then CCS, within thirty (30) days of the receipt from the City of an invoice for CCS's share of the Phase 1 Costs, shall pay the invoice (up to the Phase 1 Costs Cap) in two payments. The first payment shall be the amount of the invoice minus the Capital Fund Dollars Deficit. Notwithstanding the foregoing, the first payment for CCS's share of Phase 1 Costs shall not be due before August 1, 2025. The second payment shall be in the amount of \$250,000.00, and notwithstanding anything contained herein to the contrary, the second payment shall not be due before August 1, 2026.

CCS may dispute any invoiced amounts in writing with the City within thirty (30) days of the City's submission of the invoice to CCS (the "Dispute Notice"). If CCS disputes any of the Phase 1 Costs and the parties cannot resolve the dispute within sixty (60) days following the City's receipt of the Dispute Notice, the parties agree to mediate the dispute with a mediator that is mutually acceptable to the parties. In the event a dispute is submitted to mediation, the parties shall each use good faith efforts to resolve the dispute within forty-five (45) days of the submission to mediation. The parties shall equally split the cost for mediation.

5. **Notices.** Any and all notices, elections or demands permitted or required to be made under this Agreement shall be made in writing, signed by the party giving such notice, election or demand, and shall be delivered to the other party at the address set forth below or at such other address as may be supplied in writing by one of the following methods: (a) personal, in hand delivery to the named recipient; (b) registered or certified mail, return receipt requested; or (c) nationally recognized overnight mail courier. The date of delivery or the date of mailing, as the case may be, shall be the effective date of giving of such notice, election, or demand.

If to the City:

City Manager  
City of Centerville  
100 West Spring Valley Road  
Centerville, Ohio 45458

With a copy to:

Scott A. Liberman, Esq.  
Buckley King L.P.A.  
110 N. Main Street, Suite 1200  
Dayton, Ohio 45402

If to CCS:

Centerville City School District  
111 Virginia Avenue  
Centerville, Ohio 45458  
Attn: Director of Business Operations

With a copy to:

Matthew L. Sagone, Esq.  
Squire Patton Boggs (US) LLP  
41 South High Street  
2000 Huntington Center  
Columbus, Ohio 43215

or such other address any party hereto may give the other pursuant to this Section 5.

6. **Binding Effect.** Each of the provisions of this Agreement shall extend to and shall, as the case may require, bind, or inure to the benefit of CCS and the City, and also to each of their respective legal representatives, successors, and assigns.

7. **Representation.** The parties hereby represent and warrant to each other that (a) each of them has the legal power and authority to execute and deliver this Agreement; (b) the individual(s) executing this Agreement for each party has been duly authorized to execute and deliver the same and bind such party with respect to the provisions hereof; and (c) this Agreement constitutes a valid and binding obligation upon such party in every respect.

8. **Severability.** In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

9. **Counterparts.** This Agreement may be executed in multiple copies and multiple counterparts, each of which shall be deemed an original, but all of which together shall be and form one and the same instrument. Upon the request of either party, each party shall deliver original executed counterparts to the other parties.

*[Remainder of this page intentionally left blank; signature pages follow]*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their respective duly authorized representatives on the date and year set forth below their respective signatures, and hereby agree that this Agreement is effective as of the Effective Date.

**CCS:  
BOARD OF EDUCATION OF THE CENTERVILLE  
CITY SCHOOL DISTRICT, MONTGOMERY  
COUNTY, OHIO**

By: \_\_\_\_\_  
Dr. David Roer, President

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Laura Sauber, Treasurer

Date: \_\_\_\_\_

**THE CITY:  
CITY OF CENTERVILLE, OHIO, a City and political  
subdivision in and of the State of Ohio**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_  
Scott A. Liberman, Municipal Attorney

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# EXHIBIT A RIGHT OF WAY DEDICATION PLAN

\\G.1.1.4\Projects\2022\Projects\22061\Centerville, City of\001 Dimco Way Roadway Extension\Survey\Drawings\Final Record and Dedication Plans\22061\DimcoWay Record Plan Final - DEDICATON PLAN.dwg 21





