

RESOLUTION NO. 72-24
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Mark Engert ON
THE 15th DAY OF July, 2024.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO THE DIMCO WAY AND CLYO ROAD INTERSECTION IMPROVEMENTS AGREEMENT ON BEHALF OF THE CITY OF CENTERVILLE WITH THE BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO, FOR THE ROADWAY INFRASTRUCTURE IMPROVEMENTS TO SERVE THE DIMCO WAY EXTENSION DEVELOPMENT.

WHEREAS, the Dimco Way and Clyo Road Intersection Improvements project (PID Number 119553), (hereinafter the "Project") will involve the improvement of approximately 0.5 miles of Clyo Road, from 360 feet north of Saint Leonard Way to 150 feet south of Ole Quaker Court, and is located within Washington Township and the City of Centerville, in Montgomery County, Ohio; and

WHEREAS, the Project will include the improvement of the intersection of Clyo Road and Dimco Way, including approximately 100 feet of Dimco Way.

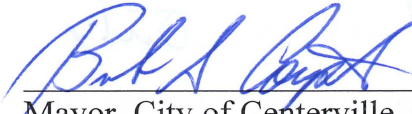
NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized and directed to enter into a the Dimco Way and Clyo Road Intersection Improvements Agreement with the Board of County Commissioners of Montgomery County, Ohio, in order to provide for roadway infrastructure improvements to serve the Dimco Way Extension Development, in a form substantially similar to a copy of which is attached hereto, marked Exhibit "A" and incorporated herein.

Section 2. That the City Manager is hereby authorized and directed to do any and everything necessary to negotiate terms of said Agreement that are acceptable to the City to allow the project to proceed.

Section 3. That this Resolution shall become effective at the earliest date allowed by law.

PASSED this 15th day of July, 2024.



Mayor, City of Centerville, Ohio

ATTEST:



Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 72-24, passed by the Council of the City of Centerville, Ohio, on the 15th day of July, 2024.



Clerk of Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

Exhibit "A"

COST-SHARING AGREEMENT

between

THE BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO,
THE MONTGOMERY COUNTY ENGINEER'S OFFICE,

and

CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO

relating to the

Dimco Way and Clyo Road Intersection Improvements

Preliminary Engineering, Final Design, Right-of-way & Construction
*Clyo Road, from approximately 360 feet north of Saint Leonard Way to approximately 150 feet
south of Ole Quaker Court*

dated

July 15, 2024

Dimco Way and Clyo Road Intersection Improvements

This is an Agreement by and between the City of Centerville, an Ohio municipal corporation, 100 West Spring Valley Road, Centerville, Ohio 45458, (the “City”) and the Board of County Commissioners of Montgomery County, Ohio, 451 W. Third Street, Dayton, Ohio 45422, (the “County”) and through the Board’s project agent, the Montgomery County Engineer (the “Engineer”) entered into as of the last date of approval by the County (all three entities considered the “Party” or “Parties”).

WHEREAS, the Dimco Way and Clyo Road Intersection Improvements project (PID Number 119553), (hereinafter the “Project”) will involve the improvement of approximately 0.5 miles of Clyo Road, from 360 feet north of Saint Leonard Way to 150 feet south of Ole Quaker Court, and is located within Washington Township and the City of Centerville, in Montgomery County, Ohio; and

WHEREAS, the Project will include the improvement of the intersection of Clyo Road and Dimco Way, including approximately 100 feet of Dimco Way; and

WHEREAS, the sections of roads within the Project area have been identified as an eligible congestion management project by the Miami Valley Regional Planning Commission (“MVRPC”) and is specifically listed on the MVRPC’s *2040 Long Range Transportation Plan*; and

WHEREAS, MVRPC previously accepted applications for its Congestion Mitigation and Air Quality Program in the fall of 2022, and said potential federal funding will become available for construction starting in the Ohio Department of Transportation’s (ODOT) Fiscal Year 2028; and

WHEREAS, the Project area contains sections of Clyo Road that are designated as part of the County Road System by the Board, and are thus under the Board's maintenance, care and control; and

WHEREAS, the Project area contains sections of Clyo and Dimco Way Roads that are within the jurisdiction of the City of Centerville, and thus the City is responsible for the maintenance, care, and control of said sections of roadway. Said sections of Clyo and Dimco Way Roads are identified on the Project Area Plan, attached hereto as Exhibit "A"; and

WHEREAS, the parties hereto agree that increasing land development within the Project area necessitate the improvements proposed herein, and are needed to mitigate existing and future vehicle congestion for said roadways; and

WHEREAS, the City, the County, and the Engineer previously recognized in City Resolution 58-22 and County Resolution 22-1515 that a joint effort to fund and construct the Clyo Road Reconstruction and Improvements will benefit the public convenience, safety, and welfare at a significant cost and time savings to both jurisdictions; and

WHEREAS, the City entered into a Local Public Agency (LPA) Federal Local-Let Project Agreement with the Ohio Department of Transportation (ODOT) for the Clyo Reconstruction & Improvement (PID 119553). Federal funding amounts and percentages are shown in the LPA Federal Local-Let Project Agreement and as shown in Exhibit "B"; and

WHEREAS, the Parties hereto agree that any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of the City, the Board, and the Engineer, and its elected officials, duly authorized employees, agents, successors and assigns.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein set forth, and with the execution of this Agreement, the City, the County, and the Engineer agree to jointly finance the design and construction of the Project, which shall include the necessary roadway improvements of the side street approaches on Dimco Way, at the intersection of Clyo Road and Dimco Way as afore-stated herein, and as shown in Exhibit "A", according to the following terms and conditions:

- I. General:** The City agrees to design and construct the Project. The City agrees to provide the Project plans to the Engineer for its review. The Parties agree that the City will be the lead agency for the Project, and that the City will contract directly for all goods and services required to deliver the Project. As lead agency, the City shall have final project decision and approval-making authority on all matters pertaining to the Project, including, but not limited to, all matters concerning the land acquisition of right of way, including compensation for same, if any.

The City and Engineer agree that either agency may jointly or individually attempt to secure additional funding apart from the MVRPC federal funding. If additional funding is obtained, funding shall be applied to the appropriate project costs, prior to subdividing the remaining local share. Additional funding, whether in the form of grants or loans, shall be shared, when applicable, among all Parties.

- II. Preliminary Engineering & Environmental Clearance:** The Engineer agrees to share in the cost of preliminary engineering at fifteen (15) percent of the cost. Preliminary engineering shall include a feasibility study, alternative evaluation report, and environmental documentation as required by the National Environmental Policy Act (“NEPA”) for a federally funded project. Preliminary engineering & environmental clearance shall be for Clyo Road, from approximately 360 feet north of St. Leonard Way to approximately 150 feet south of Ole Quaker Court including the intersection of Clyo Road and Dimco Way.

Preliminary Engineering shall be through the completion of Stage 1 design, as defined by ODOT and will follow ODOT’s Project Development Process (“PDP”) which includes, but is not limited to, determining the road alignment, the number of lanes of traffic, and intersection lane configurations. No credit for in-kind services performed by the City or the Engineer will be considered.

The Engineer agrees that following the City's successful negotiation of a preliminary engineering consulting agreement, the City will invoice the Engineer for their anticipated portion of the consultant design fee. The Engineer shall remit payment to the City within thirty (30) days of receipt of the City's invoice. Upon completion of the preliminary engineering design phase, actual costs incurred will be determined, and adjustment of the Engineer's funding responsibility for Stage 1 (either credit or debit) will be allocated to the Engineer's portion of the Final design phase. The Parties hereto understand that no external funding was obtained for the preliminary engineering project stage, and none is anticipated.

- III. Final Design:** The Engineer agrees to share in the cost of final design engineering at fifteen (15) percent. Final engineering shall include final construction plans, specifications, and estimates (the "PS&E") as required by ODOT. No credit for in-kind services performed by the City or the Engineer will be considered.

The Engineer agrees that following the City's successful negotiation of a final design consulting agreement, the City will invoice the Engineer for their anticipated portion of the consultant design fee. The Engineer shall remit payment to the City within thirty (30) days of receipt of the City's invoice. Upon completion of the final design phase, actual costs incurred will be determined, and adjustment of the Engineer's funding responsibility for the project (either credit or debit) will be allocated to the Engineer's portion of the construction phase. The Parties hereto understand that no additional funding, is anticipated as such, for the final design project stage.

- IV. Right-of-Way:** The Engineer agrees to reimburse the City for all right-of-way costs associated with land acquisitions for parcels located outside the City of Centerville corporation limits and which are needed as the result of roadway improvements to be constructed within County maintained right-of-way. Land acquisition that results from roadway improvements along Ole Quaker Court and Quaker Way are outside County maintained right-of-way and the responsibility of others. The Engineer shall have the opportunity to review and comment on right-of-way plan development to identify potential acquisitions issues and cost saving opportunities. Right-of-way costs include all permanent and temporary rights of way,

easements, acquisition consultant costs, relocations, and reimbursable utility expenses related to these parcels. Upon completion of the right-of-way acquisition for County responsible parcels, the City will invoice the Engineer for the actual costs. The Engineer shall remit payment to the City within 30 days of receipt of the City's invoice. No credit for in-kind services performed by the City or the Engineer will be considered.

- V. Construction:** The Engineer agrees to share in construction and construction engineering service costs based on project construction items located in County maintained right-of-way. . No project enhancements are to be proposed within County maintained right-of-way. The Engineer's construction and construction engineering share shall be based on the total construction and construction engineering service costs after subtracting all federal and other external funding obtained for the construction phase. Construction costs are understood to include roadway improvements, drainage pipes, shared use trails, sidewalks, construction engineering and material testing. Project enhancements are defined as any atypical landscaping, irrigation, and street lighting located outside the City of Centerville corporation limits.

The City agrees to provide all construction engineering services. The City shall receive in-kind credit for providing these services. Construction engineering services shall include in-house construction inspection and material testing, and other contracted expenses related to construction inspection

The City agrees that prior to the City advertising the construction bid documents, the City will invoice the Engineer for their estimated full portion of the construction cost share. The Engineer shall remit payment to the City within thirty (30) days of receipt of the Engineer's invoice. Upon completion of construction, the actual costs incurred for construction and construction engineering services will be determined and adjustment of the Engineer's funding responsibility (either credit or debit) will be calculated, and a final settlement payment will be made between the City and Engineer within ninety (90) days of the final construction inspection. With the exception of construction engineering services provided by the City, no credit for in-kind services performed by the City or the Engineer will be considered.

VI. Modification, Severability, and Governing Law: 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.

This contract is governed by the laws of the State of Ohio. 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.

VII. Signature: The Engineer hereby acknowledges that this Agreement must be signed and returned to the City by the Engineer within thirty (30) days of receipt of said Agreement for signature or this Agreement may be cancelled and voided by the City.

IN WITNESS WHEREOF, the parties hereto set their hands this _____ day of _____, 2024.

WITNESS:

**BOARD OF COUNTY COMMISSIONERS
MONTGOMERY COUNTY, OHIO**

Signature

By _____
Deborah A. Lieberman, President

Signature

By _____
Judy Dodge

Signature

By _____
Carolyn Rice

OR

Signature

By _____
Michael Colbert, Administrator

APPROVED AS TO FORM:
MATHIAS H. HECK, JR.
Prosecuting Attorney for Montgomery County, Ohio

By _____
Assistant Prosecuting Attorney

Date: _____

WITNESS:

CITY OF CENTERVILLE, OHIO

Signature

By _____
Signature

Print Name _____

Title _____

APPROVED AS TO FORM:

Law Director

CERTIFICATION OF FUNDS:

Date: _____

Finance Director