

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

24-13

Resolution No. _____

Passed _____, 20____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATIVE RIGHT-OF-WAY ACQUISITION AGREEMENT WITH THE CITY OF COLUMBUS FOR ARTERIAL STREET IMPROVEMENTS AT HARD AND SAWMILL ROADS (HARD ROAD PHASE A) (SAWMILL ROAD – SMOKEY ROW ROAD)

WHEREAS, the City of Dublin desires to improve traffic safety, operations and efficiencies of the intersection of Hard and Sawmill Roads; and

WHEREAS, the Dublin Community Plan promotes working cooperatively with surrounding jurisdictions to promote regional transportation planning and programming; and

WHEREAS, the City of Dublin and the City of Columbus have agreed to cooperatively acquire the necessary right-of-way for the identified transportation improvement project.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Dublin, State of Ohio, _____ of the elected members concurring:

Section 1. The City Manager is hereby authorized to enter into a Cooperative Right-of-Way Acquisition Agreement with the City of Columbus for the improvement of the intersection of Hard and Sawmill Roads, in substantially the same form as attached, with changes not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the City Manager and Director of Finance. The approval of changes thereto by those officials, and their character as not being substantially adverse to the City, shall be evidenced conclusively by their execution thereof.

Section 2. This Council hereby authorizes and directs the City Manager, the Clerk of Council, the Director of Law, the Director of Finance, or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Resolution. This Council further authorizes the City Manager and the Director of Finance, for and in the name of the City, to execute any amendments to the Cooperative Right-of-Way Acquisition Agreement, which amendments are not inconsistent with this Resolution and not substantially adverse to this City.

Section 3. This Resolution shall take effect upon adoption in accordance with Section 4.04(a) of the Revised Charter.

Passed this _____ day of _____, 2013.

Mayor - Presiding Officer

Attest:

Clerk of Council



Office of the City Manager
5200 Emerald Parkway • Dublin, OH 43017-1090
Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Members of Dublin City Council
From: Marsha I. Grigsby, City Manager *mlg*
Date: May 16, 2013

Initiated By: Paul A. Hammersmith, PE, Director of Engineering/City Engineer

Re: Resolution 24-13 - Authorizing the City Manager to enter into a Cooperative Right-of-Way Acquisition Agreement with the City of Columbus for Arterial Street Improvements at Hard and Sawmill Roads

Summary

The adopted Dublin 2013 – 2017 Capital Improvements Program includes a project to improve the Hard Road and Sawmill Road intersection (Project #ET0605) with the addition of right-turn lanes, additional left-turn lanes and modification to the traffic signal. Dublin staff has been working on the improvements to the Sawmill Road and Hard Road intersection for the past several years as development adjacent to the intersection has occurred. The project will be funded by service payments from the Kroger Centre and Lifetime Fitness tax-increment financing districts.

During that time, the City of Columbus initiated the last phase of improvements to Hard Road (Project No. 530103-100038), which will complete the widening of Hard Road to four lanes from Smokey Row Road to Sawmill Road. Staff identified the possibility of construction and coordination efficiencies if these two projects could be implemented at the same time. Staff has been working with the Columbus Department of Public Services staff to update the intersection improvement construction drawings to be incorporated into the Columbus construction drawings.

Both the improvement of the Hard Road and Sawmill Road intersection (Dublin) and the widening of Hard Road (Columbus) will require the acquisition of right-of-way east of the intersection and adjacent to Hard Road, an area within the Columbus corporation limits. Since the two projects overlap in this area, three properties are impacted by both projects. In order to simplify and minimize the property acquisition efforts east of the intersection, it would be more efficient and effective for only one jurisdiction to acquire the necessary right-of-way.

The attached Cooperative Right-of-Way Acquisition Agreement outlines the responsibilities of Dublin and Columbus regarding the necessary right-of-way acquisition for the combined improvement projects. The proposed Agreement provides that Columbus manages the right-of-way acquisition from the three properties and requires an advance of \$135,000 in order to be able to quickly settle acquisitions if and when possible. The improvements are scheduled to be advertised for bids in the fall of 2014, with construction commencing in the spring of 2015.

Recommendation

Staff recommends approval of Resolution 24-13, authorizing the City Manager to enter into a Cooperative Right-of-Way Acquisition Agreement with the City of Columbus for Arterial Street Improvements at Hard and Sawmill Roads.

**COOPERATIVE RIGHT-OF-WAY ACQUISITION AGREEMENT
BETWEEN
CITY OF COLUMBUS, OHIO
AND
CITY OF DUBLIN, OHIO
FOR ARTERIAL STREET REHABILITATION AND IMPROVEMENTS
AT HARD ROAD AND SAWMILL ROAD**

**Columbus Capital Improvement Project No. 530103-100038
Dublin Capital Improvement Project No. ET0605**

This Cooperative Right-of-Way Acquisition Agreement (the "AGREEMENT"), made and entered into this _____ day of _____, 2013 (the "Effective Date"), by and between the City of Columbus, Ohio acting through its Director of Public Service, hereinafter designated as Columbus, pursuant to and under the authority of Ordinance No. 0199-2013, passed by the City Council of the City of Columbus, approved by the Mayor of said CITY, and attested to by the City Clerk on the 14th day of February 2013, and the City of Dublin, an Ohio municipal corporation, with its offices at 5200 Emerald Parkway, Dublin, Ohio 43017, hereafter designated Dublin; and

WHEREAS, the Parties have determined that it would be in the best interests of Dublin and Columbus to widen and improve Hard Road from Sawmill Road east to Smoky Row Road, including improvement to the intersection at Hard Road and Sawmill Road; and

WHEREAS, Dublin contracted with URS Corporation to design the intersection improvements at Hard Road and Sawmill Road while Columbus contracted with URS Corporation to design the widening and improvements along Hard Road from Sawmill Road east to Smoky Row Road; and

WHEREAS, the Parties have determined that it would be in the best interests of Dublin and Columbus to provide for the efficient and coordinated right-of-way acquisition; and

WHEREAS, the Parties desire to enter into a Cooperative Right-of-Way Acquisition Agreement, to provide for the acquisition necessary for the construction of various roadway and associated infrastructure and intersection improvements; and

WHEREAS, the Parties have agreed that Dublin will acquire the right-of-way attributable to the intersection improvements within the Dublin corporation limits and Columbus will acquire the right-of-way attributable to the infrastructure and intersection improvements within the Columbus corporation limits; and

WHEREAS, the Parties have agreed that Dublin will make payment to Columbus for the right-of-way acquisition attributable to the intersection improvements within the Columbus corporation limits as outlined in Article II; and

WHEREAS, Columbus will enter into contract for the construction of the infrastructure and intersection improvements as a single project;

NOW THEREFORE, the Parties covenant, agree and obligate themselves as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions. Unless otherwise defined herein, words and terms used in this Agreement with initial capital letters shall have the meanings set forth in this Section 1.1.

“*Agreement*” means this Cooperative Right-of-Way Acquisition Agreement by and between Dublin and Columbus, as duly amended or supplemented from time to time in accordance with its terms.

“*Agreement Term*” means the period commencing with the execution and delivery of this Agreement and ending on the Termination Date.

“*Authorized Dublin Representative*” means initially the Director of Engineering/City Engineer of Dublin. Dublin may from time to time provide a written certificate to Columbus signed on behalf of Dublin by the City Manager designating an alternative or alternates who shall have the same authority, duties and powers as the initial Authorized Dublin Representative.

“*Authorized Columbus Representative*” means initially the Director of the Department of Public Service of Columbus. Columbus may from time to time provide a written certificate to Dublin signed on behalf of Columbus by the Director of Public Service designating an alternative or alternates who shall have the same authority, duties and powers as the initial Authorized Columbus Representative.

“*Completion Date*” means the dates given pursuant to Section 2.3 of this Agreement.

“*Event of Default*” means an Event of Default under Section 3.1 of this Agreement.

“*Force Majeure*” means acts of God, fires, epidemics, landslides, floods, strikes, lockouts or other industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents of machinery; transmission piles or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or any cause or event (other than financial inability) not reasonably within the control of the Parties.

“*Infrastructure Improvements*” means those improvements to Hard Road (Columbus Capital Improvement Project No. 530103-100038) from Sawmill Road easterly approximately 1.2 miles to 387 feet west of Smoky Row Road. The improvements shall include widening Hard

Road to 5 lanes, curb and gutter, sidewalks, provisions for bicycle traffic, traffic signals, street lighting, regulatory road signage, pavement markings, storm drainage, utility location and any necessary relocation, and landscaping, as per plans for Columbus 2845 Drawer E and Dublin 2351 Drawer E, all in compliance with the Americans with Disabilities Act ("A.D.A.") criteria.

"Intersection Improvements" means those improvements to the Hard Road and Sawmill Road intersection (Dublin Capital Improvement Project No. ET0605) which shall include the addition of right-turn lanes, additional left-turn lanes and modifications to the traffic signal, sidewalks, shared-use paths, storm drainage, pavement markings and regulatory signage.

"Notice Address" means:

(a) As to Dublin:

City of Dublin, Ohio
5800 Shier-Rings Road
Dublin, Ohio 43016
Attention: Director of Engineering

(b) As to Columbus:

Office of Support Services
Department of Public Service
109 N. Front St. – Ground Floor
Columbus, Ohio 43215
Attn: Contract Manager

or a different address as to which notice is given pursuant to Section 4.1 of this Agreement.

"Person" shall mean an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a joint venture, a trust, an unincorporated organization, or a government or any agency or political subdivision thereof.

"State" means the State of Ohio, one of the United States of America.

"Termination Date" shall be defined as after all right-of-way attributable to the intersection improvements within the Columbus corporation limits, as outlined in Article II, has been acquired, final accounting has occurred, and a refund, if necessary, has been given to Dublin.

Section 1.2 Certain Words Used Herein; References. Any reference herein to Dublin or Columbus, any members or officers thereof, or other public boards, commissions, departments, institutions, agencies, bodies or other entities, or members or officers thereof,

includes without limitation, entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or performing their functions lawfully.

Any reference to sections or provisions of the Constitution of the State, the Act, a section, provision or chapter of the Ohio Revised Code, federal or State laws includes without limitation, that section, provision or chapter, or those laws or regulations, as amended, modified, revised, supplemented or superseded from time to time.

Words of any gender include the correlative words of any other gender. Unless the context indicates otherwise, words importing the singular number import the plural number, and vice versa. The terms “hereof”, “herein”, “hereby”, “hereto”, and “hereunder”, and similar terms, refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this Agreement.

ARTICLE II ACQUISITION OF THE RIGHT OF WAY

Section 2.1 General Considerations. Dublin agrees to finance the portion of right-of-way acquisition associated with property located within the Columbus corporation limits necessary for the Intersection Improvements, up to a maximum of \$135,000.00. If costs are expected to be higher than \$135,000.00, the parties will discuss any increases in costs and mutually agree how the additional costs shall be split between the Parties. If the Parties’ agreement results in a greater cost to Dublin than the maximum amount of \$135,000.00, a written addendum to this Agreement may be required, outlining the additional items and providing funding for the additional items by the appropriate Party prior to incurring the additional cost. Columbus City Council must give approval for the City to enter into any agreement that increases the amount of money for this project and to appropriate funds for any cost increase. Payment can be made for additional costs only after these approvals are received and the addendum is executed. Dublin will acquire right-of-way within the Dublin corporation limits required for the Intersection Improvements.

Section 2.2 Acquisition of Right-of-Way. Dublin covenants and agrees that it will acquire right-of-way within the Dublin corporation limits and pay Columbus to acquire right-of-way within the Columbus corporation limits necessary for the Intersection Improvements and Columbus covenants and agrees to acquire right-of-way within the Columbus corporation limits necessary for the Intersection Improvements.

- (a) Dublin covenants and agrees:
 - (1) To finance all costs of right-of-way acquisition activities including, but not limited to, legal fees, appraisal fees, negotiator fees, right-of-way consultant fees, and court fees associated with the Intersection Improvements within the Columbus corporation limits;

- (2) To remit payment of \$135,000.00 to Columbus upon Dublin’s execution of this agreement;

Payment(s) shall be made out to COLUMBUS CITY TREASURER; and be delivered to:

Office of Support Services
 Department of Public Service
 109 N. Front St. – Ground Floor
 Columbus, Ohio 43215
 Attn: Contract Manager

- (3) To remit payment to Columbus upon execution of amendment(s) to this agreement for agreed upon necessary cost increases;
- (4) To submit copies of recorded deeds to Columbus for right-of-way in the Dublin corporation limit associated with the Intersection Improvements;
- (5) To have right-of-way within the Dublin Corporation limits cleared by May 31, 2014, otherwise the two projects, the Intersection Improvements and Infrastructure Improvements, will be sold separately.

(b) Columbus covenants and agrees:

- (1) To acquire right-of-way on behalf of Dublin within the Columbus corporation limits associated with the Intersection Improvements:

| Parcel | Parcel ID No. | Current Owner | Future Owner |
|----------|---------------|------------------------------|--------------|
| 8WD | 590-128611 | WEC 98H-38 LLC | Columbus |
| 9WD | 590-175664 | Society Bank | Columbus |
| 10WD & T | 590-175665 | Robert G. & Jane M. Eickholt | |

- (2) To notify Dublin of any costs above the maximum amount of \$135,000.00, seek agreement for cost increase, and draft amendment(s) to this agreement;
- (3) To refund Dublin for any excess funds after acquisition is complete.

ARTICLE III
EVENTS OF DEFAULT AND REMEDIES

Section 3.1 Events of Default and Remedies.

- (a) Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either Party hereto, or any successor to such Party, such party of successor shall, upon written notice from the other, proceed promptly to cure or remedy such default or breach. In case such remedial action is not taken or not diligently pursued within thirty (30) days of such written notice, the Party asserting default or breach may institute such proceedings at law or in equity as may be necessary or desirable in its opinion to remedy such default or breach.
- (b) Notwithstanding the preceding paragraph, if by reason of Force Majeure any Party fails in the observance or performance of any of its agreements, duties or obligations to be observed or performed under this Agreement, the Party shall not be deemed to be in default under this agreement. The Party will give notice promptly to the others of any event of Force Majeure and will use its best efforts to remedy that event with all reasonable dispatch; provided that a Party will not be required to settle strikes, lockouts or other industrial disturbances by acceding to the demands of any opposing Person, when in that Party's judgment, that course would be unfavorable to it; and no suspension will constitute an Event of Default if that suspension is a result of the application of federal or State wage, price or economic stabilization controls, cost containment requirements, restrictions on rates or charges, which prevents the Party from observing and performing the applicable covenant, agreement or obligation.
- (a) The declaration of an Event of Default hereunder and the exercise of rights, remedies and powers upon the declaration are subject to any application limitations of federal or bankruptcy law affecting or precluding the declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Section 3.2 No Remedy Exclusive. Unless provided expressly otherwise herein, no right, remedy and power conferred upon or reserved to either Party under this Agreement is intended to be exclusive of any other available right, remedy or power, but each right, remedy and power shall be cumulative and concurrent and shall be in addition to every other right, remedy and power available under this Agreement or existing at law, in equity or by statute or otherwise now or hereafter.

No exercise, beginning of the exercise, or partial exercise by either Party of any one or more rights, remedies or powers preclude the simultaneous or later exercise by that Party of any or all rights, remedies or powers. No delay or omission in the exercise of any right, remedy or power accruing upon any Event of Default hereunder shall impair that or any other right, remedy

or power of shall be construed to constitute a waiver of any Event of Default hereunder, but any right, remedy or power may be exercised from time to time and as often as may be deemed to be expedient.

Section 3.3 No Additional Waiver Implied by One Waiver. In the event that any covenant, agreement or obligation under this Agreement shall be breached by either Columbus or Dublin and the breach shall have been waived thereafter by Columbus or Dublin, as the case may be, the waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other or any subsequent breach thereafter.

No failure by either Party to insist upon the strict observance or performance by the other Party of any covenant, agreement or obligation under this Agreement and no failure to exercise any right, remedy or power consequent upon a breach thereof, shall constitute a waiver of any right to strict observance or performance or a waiver of any breach. No express waiver shall be deemed to apply to any other breach or to any existing or subsequent right to remedy the breach.

Section 3.4 Provisions Subject to Applicable Law. All rights, remedies and powers hereunder may be exercised only to the extent permitted by applicable law. Those rights, remedies and power are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law.

ARTICLE IV MISCELLANEOUS

Section 4.1 Notices. Except as otherwise specifically set forth in this Agreement, any 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. A duplicate copy of each notice, certificate, request or other communication given hereunder to Dublin or Columbus shall be given also to the others. The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificate, requests or other communications shall be sent.

Section 4.2 Extent of Provisions Regarding Dublin and Columbus; No Personal Liability. No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future trustee, member, officer, agent or employee of Dublin or Columbus in an individual capacity, and to the extent authorized and permitted by applicable law, no official executing or approving Dublin or Columbus' participation in this

Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 4.3 Hold Harmless. To the extent permitted by law, Dublin shall hold Columbus harmless from all suits, actions, or claims arising from any injuries or damages sustained by any person or property in consequence of any neglect or on account of any wrongful act or omission on the part of Dublin, its employees, agents, or contractors relating to its responsibilities under this Agreement.

Section 4.4 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Parties, and their respective permitted successors and assigns.

The Parties will observe and perform faithfully at all times all covenants, agreements and obligations under this Agreement.

Section 4.5 Execution Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

Section 4.6 Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason,

- (a) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,
- (b) the illegality or invalidity or any application hereof or thereof shall not affect any legal and valid application hereof or thereof, and
- (c) each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

Section 4.7 Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 4.8 Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State. All claims, counterclaims, disputes and other matters in question between Dublin, its agents and employees, and Columbus, its

agents and employees, arising out of or relating to this Agreement or its breach will be decided in court of competent jurisdiction with the County of Franklin within the State of Ohio.

Section 4.9 Survival of Representations and Warranties. All representations and warranties of Columbus and Dublin in this Agreement shall survive the execution and delivery of this Agreement.

Section 4.10 Dispute Resolution. In the event a dispute arises regarding any terms and conditions contained in this Agreement, which is not an Event of Default under Article IV, notification of such dispute shall be sent to a designated representative of Dublin or Columbus, in writing. In such notification, the disputing party shall present such evidence as may support its position. Within ten (10) calendar days of receipt of the notification, the designated representatives shall review the facts and circumstances surrounding the dispute for the purpose of determination. If the designated representatives cannot come to agreement on the dispute, each Party may seek any remedies available to it.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Dublin and Columbus have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF DUBLIN, OHIO

By: _____
Marsha I. Grigsby
City Manager

Approved as to form:

Stephen J. Smith
Dublin Law Director

CITY OF COLUMBUS, OHIO

By: _____
Mark. Kelsey
Director of Public Service

Approved as to form:

Richard C. Pfeiffer, Jr.
Columbus City Attorney