




To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager 
Date: April 7, 2016

Re: Ordinance No. 15-16 - Authorizing the City Manager to Enter into a Cooperative Construction Agreement with Union County and Franklin County for the Construction of Intersection Improvements at State Route 161/Post Road and Cosgray Road

Background

Union County has asked the City of Dublin to participate in a Cooperative Construction Agreement with both Union County and Franklin County for improvements to the intersection at State Route 161/Post Road and Cosgray Road. The need and opportunity to improve the intersection is directly related to the development of Dublin Green and the inevitable opening of a COSTCO's at the roundabout at SR 161/Post Road and Industrial Parkway (see Attachment A). The proposed improvement, as a long term solution to this intersection, will be in the form of a roundabout (generally as shown in Attachment A). The agreement will be between Dublin, Union County and Franklin County. Union County will have a separate agreement with the developer of the Costco site for the developer's contribution to the project.

Initially, the developer of the COSTCO and Dublin Green sites proposed to install a turn lane to help alleviate the anticipated traffic impact of their development. However, the various governmental jurisdictions served by the SR 161/Post Road & Cosgray intersection did not agree this was adequate nor a good use of funds. All jurisdictions felt the improvement offered by the developer would be short lived. Therefore, the jurisdictions worked together to encourage the developer to put more funding into the long term solution. This also includes the donation of any necessary ROW and/or permanent and temporary easements. Each jurisdiction felt now is the time to put funding forward for a much longer term solution. In that the southwest corner of the intersection lies within the City of Dublin and would also help to serve Dublin to the south and to the west, staff feels it is appropriate and fair to contribute towards the improvement of this intersection as proposed by Ordinance 15-16 and the accompanying Agreement.

It is appropriate to point out that the timing of this intersection has been precipitated by the decision of Jerome Township Trustees to allow the zoning and construction of COSTCO and Dublin Green. While these retail developments are consistent with their own comprehensive plan, the timing and lack of transportation planning in conjunction with those decisions have resulted in Union County, Franklin County and the City of Dublin to react by constructing this intersection improvement well in advance of any previous plans. The City of Dublin continues to urge Jerome Township Trustees to pursue more comprehensive and timely assessments of traffic impacts for the purpose of understanding infrastructure needs and associated costs, as well as, working proactively with those, such as the City of Dublin, who will have to fund such improvements PRIOR TO making such zoning decisions and/or approvals.

Contract Terms

The preliminary funding structure for financing the Intersection Improvements is as follows:

- Developer \$1,000,000 (contribution is fixed at this value)
- Dublin \$ 937,500 (contribution is fixed at this value)
- Franklin County \$ 250,000 (contribution is fixed at this value)
- Union County \$2,012,500 (balance based on a project estimate of \$4,200,000)

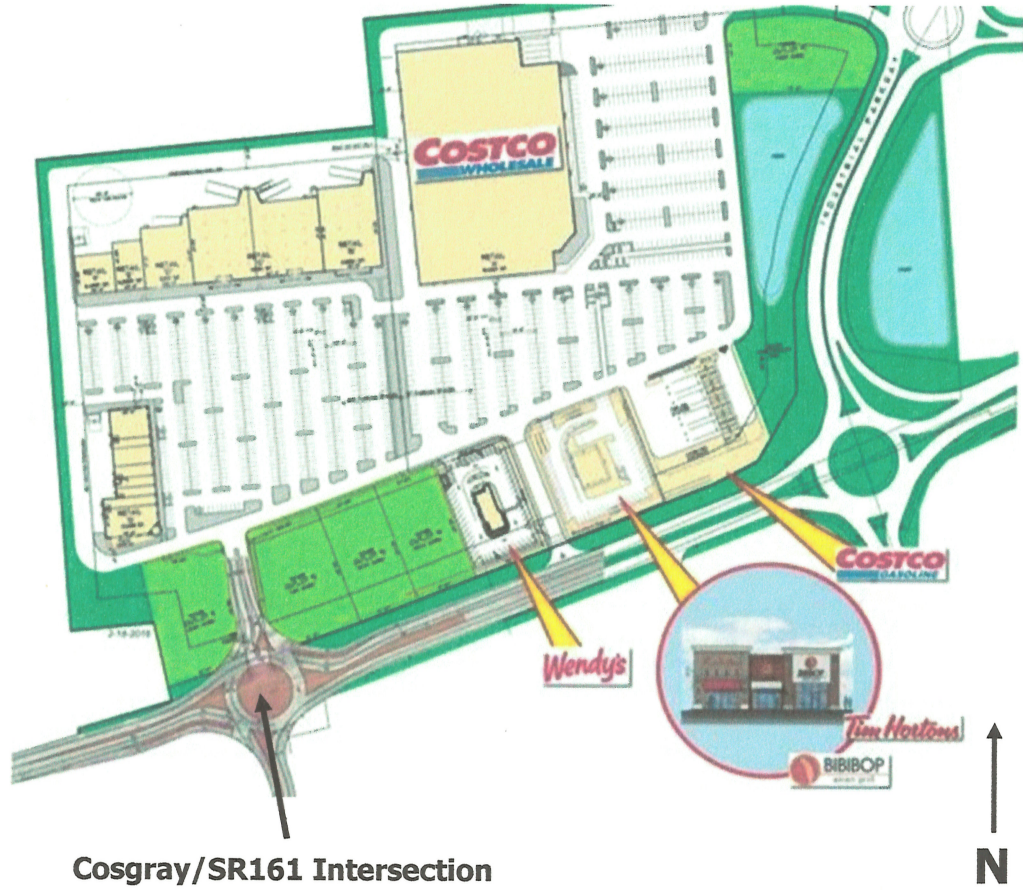
Under the Agreement, Union County is responsible for collecting each entity's contribution and making payments for all costs of the project. Dublin's responsibilities include the management of right-of-way acquisition, design engineering, construction bidding, contractor selection and management of the project. This is in addition to the \$937,500. Franklin County is responsible for making its \$250,000 contribution.

The City will advance its portion of the funds for this project from its General Fund and will reimburse itself from the West Innovation TIF, established in 2014, will re-pay the City's General Fund at a later date. Management of the project, to include legal fees, will be absorbed by the City in the form of soft costs and standing agreements.

Recommendation

Staff recommends that City Council adopt Ordinance No. 15-16 at the second reading/public hearing on April 25, 2016.

ATTACHMENT A



RECORD OF ORDINANCES

Ordinance No. 15-16

Passed _____, 20____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATIVE CONSTRUCTION AGREEMENT BETWEEN THE CITY OF DUBLIN, UNION COUNTY AND FRANKLIN COUNTY FOR THE CONSTRUCTION OF INTERSECTION IMPROVEMENTS AT STATE ROUTE 161/POST ROAD AND COSGRAY ROAD

WHEREAS, Dublin, Union County, Franklin County and the Ohio Department of Transportation have analyzed potential improvements to the intersection at State Route 161/Post Road and Cosgray Road;

WHEREAS, funding for the intersection improvements will come from a variety of sources;

WHEREAS, the preliminary funding structure for financing the Intersection Improvements is as follows:

- Developer \$1,000,000 (contribution is fixed at this value)
- Dublin \$937,500 (contribution is fixed at this value)
- Franklin County \$250,000 (contribution is fixed at this value)
- Union County \$2,012,500 (balance based on a project estimate of \$4,200,000)

WHEREAS, Dublin, Franklin County and Union County desire to enter into an Agreement and cooperate in the design and construction of the identified improvement project;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, Franklin, Delaware and Union Counties, State of Ohio, _____ of the elected members concurring:

Section 1. The City Manager is hereby authorized to enter into a Cooperative Construction Agreement Between the City of Dublin, Union County and Franklin County for the Construction of Intersection Improvements at State Route 161/Post Road and Cosgray Road, in substantially the same form as attached, with changes not inconsistent with this Ordinance 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 Ordinance. 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 Construction Agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to this City.

Section 3. This Ordinance shall take effect in accordance with Section 4.04(b) of the Revised Charter.

Passed this _____ day of _____, 2016.

Mayor - Presiding Officer

Attest:

Clerk of Council

**COOPERATIVE CONSTRUCTION AGREEMENT
BETWEEN THE CITY OF DUBLIN, UNION COUNTY AND FRANKLIN COUNTY
FOR THE CONSTRUCTION OF INTERSECTION IMPROVEMENTS AT STATE
ROUTE 161/POST ROAD AND COSGRAY ROAD**

This Cooperative Construction Agreement (the “Agreement”) is made and entered into this _____ day of _____, 2016 (the “Effective Date”), by and between the City of Dublin, an Ohio municipal corporation, with its offices at 5200 Emerald Parkway, Dublin, Ohio 43017 (“Dublin”), Union County, with its offices at 233 West Sixth Street, Marysville, Ohio, 43040 (“Union County”), and Franklin County, with its offices at _____ (“Franklin County”) (collectively “the Parties”).

WHEREAS, Union County has consulted with representatives from Dublin, Franklin County and the Ohio Department of Transportation for input on the potential improvements of the intersection at State Route 161/Post Road and Cosgray Road; and

WHEREAS, funding for the intersection improvements will come from a variety of sources; and

WHEREAS, the preliminary funding structure for financing the Intersection Improvements is as follows:

- Developer \$1,000,000 (contribution is fixed at this value)
- Dublin \$937,500 (contribution is fixed at this value)
- Franklin County \$250,000 (contribution is fixed at this value)
- Union County \$2,012,500 (balance based on a project estimate of \$4,200,000); and

WHEREAS, Dublin, Franklin County and Union County desire to enter into an Agreement and cooperate in the design and construction of the identified improvement 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 Construction Agreement by and between Dublin, Union County and Franklin County, 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 designating an alternative or alternates who shall have the same authority, duties and powers as the initial Authorized Dublin Representative.

“*Authorized Franklin County Representative*” means initially **the Franklin County Engineer**_____. Franklin County may from time to time provide a written certificate designating an alternative or alternates who shall have the same authority, duties and powers as the initial Authorized Franklin County Representative.

“*Authorized Union County Representative*” means initially the Union County Engineer. Union County may from time to time provide a written certificate designating an alternative or alternates who shall have the same authority, duties and powers as the initial Authorized Union County Representative.

Completion Date is August 31, 2017.

“*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.

“*Intersection Improvements*” means installation of a hybrid roundabout with the following configuration:

- Eastbound: Through/left lane, through lane and right turn lane
- Westbound: Through/left lane, through lane and right turn lane
- Northbound: Through/left/right lane and right turn lane
- Southbound: Left turn lane, through/left/right lane and right turn lane

This also includes appropriate merging of a four-lane section to the two-lane section west of the roundabout, street lights, stormwater drainage facilities and appropriate traffic signage and striping.

“*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 Union County:
Board of County Commissioners
233 West Sixth Street
Marysville, OH 43040

(c) As to Franklin County:

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 construction activities are complete and the final accounting has occurred.

Section 1.2 Certain Words Used Herein; References. Any reference herein to Dublin, Union County, or Franklin County, 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 CONSTRUCTION AGREEMENT AND PAYMENT

Section 2.1 General Considerations.

(a) Dublin covenants and agrees:

- (1) To work directly with affected property owners and seek the acquisition of all property/right-of-way within the boundaries of the Intersection Improvements necessary for completion of the Intersection Improvements. Dublin's responsibilities regarding right-of-way acquisition include, but are not limited to, appraisals, negotiations, fair market value determination and acquisition.
 - (2) To provide design engineering and select the design engineer and manage the design and plan development for the Intersection Improvements. Dublin will involve Franklin County, Union County and ODOT in the review of the design and project scheduling.
 - (3) To manage the construction bidding and contractor selection for the Intersection Improvements.
 - (4) To manage the construction engineering and inspection after the contract is awarded.
 - (5) To coordinate interactions with utility providers affected by the Intersection Improvements.
 - (6) To make a financial contribution of \$937,500 (this is a fixed contribution).
 - (7) To use its best efforts to deliver the completed Intersection Improvements by August 31, 2017, provided, however there shall be no penalty for delays in completing the Intersection Improvements by that date.
- (b) Franklin County covenants and agrees:
- (1) To make a cash contribution of \$250,000.
 - (2) To use its best efforts to deliver the completed Intersection Improvements by August 31, 2017, provided, however there shall be no penalty for delays in completing the Intersection Improvements by that date.
- (c) Union County covenants and agrees:
- (1) To finance and pay the remaining cost of the Intersection Improvements after the contributions by Dublin and Franklin County have been made.
 - (2) To realize any cost savings if the total project cost (including engineering, design, right-of-way costs, utility relocation, and construction) totals less than the estimated \$4.2 million. Conversely, Union County will absorb any cost overruns for the total project cost.
 - (3) To use its best efforts to deliver the completed Intersection Improvements by August 31, 2017, provided, however there shall be no penalty for delays in completing the Intersection Improvements by that date.

Section 2.2 Payment

- (a) The Parties agree that all project costs shall flow through Union County. Franklin County and Dublin shall make payment to Union County of their fixed contribution

amount no later than 60 days after execution of this Agreement. Union County shall place these contributions in an escrow account for the project.

- (b) Payment requests for contractors and any and all land acquisition costs shall be approved and submitted by Dublin and Franklin County to Union County. Union County will make direct payment for all approved services and costs within 30 days of receipt.

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 any 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.
- (c) Dublin may unilaterally terminate this Agreement upon thirty (30) days' written notice to the other Parties if it cannot obtain all property/rights-of-way necessary for completion of the Intersection Improvements upon terms acceptable to Dublin.

Section 3.2 No Remedy Exclusive. Unless provided expressly otherwise herein, no right, remedy and power conferred upon or reserved to any 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 any 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 Dublin, Franklin County or Union County and the breach shall have been waived thereafter by Dublin, Franklin County or Union County, 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 any Party to insist upon the strict observance or performance by another 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 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. 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, Franklin County and Union County; 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, Franklin County or Union County in an individual capacity, and to the extent authorized and permitted by applicable law, no official executing or approving Dublin, Franklin County and Union County's 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 4.4 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 of Ohio. All claims, counterclaims, disputes and other matters in question arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction with the County of Union within the State of Ohio.

Section 4.9 Survival of Representations and Warranties. All representations and warranties of Dublin, Union County and Franklin County 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, Franklin County, or Union County, 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.

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IN WITNESS WHEREOF, Dublin, Franklin County and Union County 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: _____
Dana L. McDaniel
City Manager

Approved as to form:

Dublin Law Director

FRANKLIN COUNTY

By: _____

UNION COUNTY

By: _____
Steve A. Stolte
President, Board of County Commissioners

Approved as to form:

Thayne D. Gray, Asst. Pros. Atty.