

To: Members of Dublin City Council

From: Dana L. McDaniel, City Manager

Date: August 10, 2021

Initiated By: Robert E. Ranc, Jr., Deputy City Manager/Chief Operating Officer
Paul A. Hammersmith, PE, Director of Engineering/City Engineer
Brian D. Gable, PE, Deputy Director of Engineering
John Henderson, PE, Civil Engineer II

Re: Resolution 49-21 – Authorizing the City Manager to Enter Into a Cooperative Agreement between the City of Dublin, Concord Township, and the Delaware County Engineer's Office for the Concord Road Resurfacing Project

Summary

The Delaware County Engineer's Office (DCEO) has programed the resurfacing of Concord Road as part of their 2021 Road Improvement Program (Resurfacing) project. A portion of Concord Road located between Glick Road and the corporation limit is within the City of Dublin. The City of Dublin, Concord Township, and the DCEO desire to enter into a cooperative agreement (referred to as "agreement") for the design and construction of the project. The attached exhibit shows the extent of the work within the City of Dublin corporation limits.

Per the agreement, the design, bidding, and contractor selection are all responsibilities of the DCEO. The City of Dublin is financially responsible for the cost of construction within the City's corporation limits. Concord Township and the DCEO are responsible for the costs of the project outside the City of Dublin's corporation limits.

The engineer's estimate for the proposed work within the City of Dublin's corporation limit is \$60,000. The Delaware County Engineer's Office bid the project and entered into a contract with The Shelly Company. Based on the bid unit costs and plan quantities, the City of Dublin's cost to resurface the portion of Concord Road within the City is \$50,000.

Dublin staff had programmed the portion of Concord Road within the City for resurfacing in 2022. However, given Concord Township was resurfacing their portion this year, it made sense to resurface the entire roadway (both portions) as one coordinated project. The City's cost of the work is to be funded from account AT211 – Annual Street Maintenance Program in the 2021-2025 Capital Improvements Program (CIP).

The agreement provides that the DCEO and Concord Township are to use their best efforts to deliver the completion of the project by September 17, 2021. There are no penalties for delays in completing the roadway improvements by this date.

Recommendation

Staff recommends Council approval of Resolution 49-21, authorizing the City Manager to enter into a cooperative agreement with Concord Township and the Delaware County Engineer's Office for the resurfacing of Concord Road.

RECORD OF RESOLUTIONS

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 30045

Resolution No. 49-21 Passed , 20

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATIVE AGREEMENT BETWEEN THE CITY OF DUBLIN, CONCORD TOWNSHIP, AND THE DELAWARE COUNTY ENGINEER’S OFFICE FOR THE CONCORD ROAD RESURFACING PROJECT

WHEREAS, Concord Township, the Delaware County Engineer’s Office, and the City of Dublin have identified the need to resurface Concord Road between Glick Road and Harriott Road (hereinafter referred to as “Project”); and

WHEREAS, the City of Dublin agrees to pay the cost of constructing the portion of the Project within the City of Dublin corporation limits; and

WHEREAS, Concord Township and the Delaware County Engineer’s Office agree to pay the cost of constructing the portion of the Project outside the City of Dublin corporation limits; and

WHEREAS, design, bidding, and contractor selection are to be the responsibility of the Delaware County Engineer’s Office; and

WHEREAS, Concord Township, the Delaware County Engineer’s Office, and the City of Dublin desire to enter into an agreement and cooperate in the construction of the Project.

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

Section 1. The City Manager is hereby authorized to enter into a cooperative agreement with Concord Township and the Delaware County Engineer’s Office for the resurfacing of approximately 900 feet of Concord Road as well as less than 100 feet of curb and gutter repair, in substantially the same form as attached, with changes not inconsistent with this Resolution and not substantially adverse to the 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 Resolution shall take effect upon passage in accordance with Section 4.04(a) of the Revised Charter.

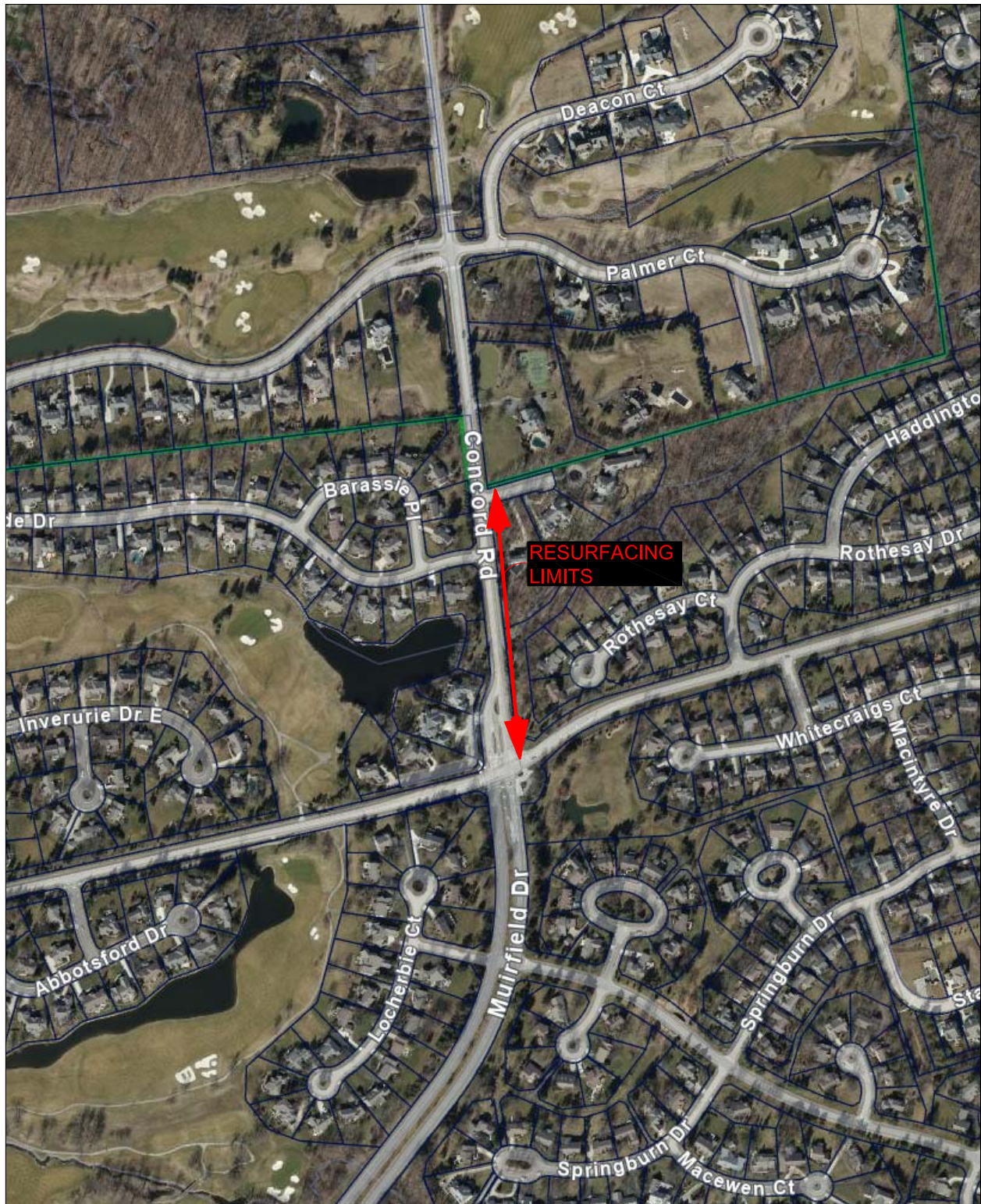
Passed this day of August, 2021.

Mayor - Presiding Officer

ATTEST:

Clerk of Council

CONCORD ROAD RESURFACING EXHIBIT



**COOPERATIVE AGREEMENT
BETWEEN THE CITY OF DUBLIN, CONCORD TOWNSHIP, AND THE DELAWARE
COUNTY ENGINEER'S OFFICE FOR THE CONCORD ROAD RESURFACING
PROJECT**

This Cooperative Agreement (the "Agreement") is made and entered into this _____ day of _____, 2021 (the "Effective Date"), by and between the City of Dublin, an Ohio municipal corporation, with its offices at 5555 Perimeter Drive, Dublin, Ohio 43017 ("Dublin"); Concord Township, with its offices at 6385 Home Road, Delaware, Ohio 43015 ("Concord Township") and the Delaware County Engineer's Office, with its offices at 50 Channing Street, Delaware, Ohio 43015 ("DCEO") (collectively "the Parties").

WHEREAS, Dublin, Concord Township and the DCEO desire to enter into an Agreement and cooperate in the design and construction of the Concord Road Resurfacing;

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 Agreement by and between Dublin, Concord Township and DCEO, 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 Concord Township Representative*" means initially _____. Concord Township 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 Concord Township Representative.

"*Authorized DCEO Representative*" means initially the County Engineer. DCEO 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 DCEO Representative.

"*Completion Date*" is September 17th, 2021.

“*Concord Road Resurfacing*” consists of the resurfacing approximately 900 feet of roadway, less than 100 feet of curb repairs, and storm inlet repairs on Concord Road. The location of the work is north of Glick Road to the City of Dublin corporation limit as depicted in the attached Exhibit A.

“*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.

“*Notice Address*” means:

(a) As to Dublin:

City of Dublin, Ohio
6555 Shier Rings Road
Dublin, Ohio 43016
Attention: Director of Engineering/City Engineer

(b) As to Concord Township:

Concord Township
6385 Home Road
Delaware, Ohio 43015
Attention: _____

(c) As to Delaware County:

Delaware County Engineer’s Office
50 Channing Street
Delaware, Ohio 43015
Attention: Delaware County Engineer

“*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, Concord Township, DCEO, 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) Concord Township covenants and agrees:

- (1) To use its best efforts to deliver the completed roadway improvements by September 17, 2021, provided, however there shall be no penalty for delays in completing the roadway improvements by that date.
- (2) To fund the project, with assistance from the City of Dublin pursuant to Section 2.1(b).

(b) Dublin covenants and agrees:

- (1) To make a cash contribution of \$50,000.

(c) DCEO covenants and agrees:

- (1) To provide design engineering and manage the construction bidding and contractor selection.
- (2) To manage the construction engineering and inspection after the contract is awarded.

- (3) To use its best efforts to deliver the completed roadway improvements by September 17, 2021, provided, however there shall be no penalty for delays in completing the roadway improvements by that date.

Section 2.2 Payment. The Parties agree that all project costs shall flow through DCEO. Dublin shall make payment to Concord Township of its contribution amount no later than 60 days after execution of this Agreement. Dublin shall place this contribution in an escrow account for the project.

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 Project 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 or Concord Township, and the breach shall have been waived thereafter by Dublin or Concord Township, 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, Concord Township, and the DCEO; 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, Concord Township, or the DCEO in an individual capacity, and to the extent authorized and permitted by applicable law, no official executing or approving Dublin, Concord Township, or the DCEO'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 Delaware within the State of Ohio.

Section 4.9 Survival of Representations and Warranties. All representations and warranties of Dublin and Concord Township 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 and Concord Township 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 Concord Township 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

CONCORD TOWNSHIP

By: _____

DELAWARE COUNTY ENGINEER'S OFFICE

By: _____