

**To:** Members of Dublin City Council

**From:** Dana L. McDaniel, City Manager

**Date:** September 21, 2021

**Initiated By:** Megan D. O'Callaghan, Deputy City Manager/Chief Finance and Development Officer  
Paul A. Hammersmith, PE, Director of Engineering/City Engineer  
Jean-Ellen M. Willis, PE, Deputy Director of Transportation & Mobility

**Re:** Resolution 54-21 – Authorizing the City Manager to Enter Into a Cooperative Construction Agreement with Union County for the US 33–SR 161–Post Road Interchange Improvements (17-013-CIP/ET003)

## Summary

The City of Dublin is working cooperatively with project partners at Union County and the Ohio Department of Transportation (ODOT) to improve the interchange at US 33–SR 161–Post Road. The project was developed in the early 2000's with the original interchange modification study approved in 2001. Detailed design was developed from 2005 through 2008, along with right-of-way acquisition for the majority of the project, and then the design project was put on hold. Meanwhile, phases of the design surrounding the central interchange were constructed, including the Liggett Road relocation in 2008; widening SR 161, realigning and improving the intersection of Industrial Parkway in 2010; and constructing the Eiterman Road roundabout in 2015. The central interchange project resumed in 2019 through cooperation of the project partners to complete a full funding package.

In the 2021-2025 Capital Improvements Program (CIP), construction was programmed for project number ET003 in 2021. Construction for the project is currently programmed to begin in 2022, with an anticipated substantial completion date in 2024.



*Figure 1. US 33 - SR 161 - Post Road Interchange*

Union County and ODOT have been working closely with Dublin staff to develop this project, shown in Figure 1. The interchange improvements are mutually beneficial to ODOT, Dublin, Union County, and the region. As such, ODOT, Dublin, Union County, and MORPC, along with private development, are all funding partners for the project. ODOT requested Dublin assemble all of the local partner funding to make a single payment to ODOT for the project. As such, Union County will make a payment to Dublin for the Union County construction contribution and the Union County developer contribution, and then Dublin will assemble the local contributions and provide them to ODOT.

Union County will make their construction contribution of \$3.5 million, along with a \$1.5 million contribution from FedEx. These funds will be combined with the estimated \$4.92 million Dublin construction contribution and the \$1.25 million OSU contribution, for an estimated \$11.17 million to be paid to ODOT as described in Resolution 55-21 [ODOT resolution], which is also an agenda item for consideration with this City Council Meeting.

Based on the current sale schedule, ODOT will invoice Dublin in January 2022 prior to the bid opening planned for March 2022. The cost of the construction project is presently estimated at \$33,300,000. Adding the utility estimate, the total construction cost for the project is estimated at \$34,050,000. The overall construction funding plan is summarized in Table 1 below.

*Table 1. Construction Funding Summary*

<b>Contributor</b>	<b>Utility Estimate</b>	<b>Construction Estimate</b>	<b>Sum</b>
<b>Dublin</b>	\$0.75 M	\$ 4.92 M	\$5.67 M
<b>Private Development via Dublin</b>	-	\$1.25 M	\$1.25 M
<b>Union County</b>	-	\$ 3.50 M	\$ 3.50 M
<b>Private Development via Union Co</b>	-	\$ 1.50 M	\$ 1.50 M
<b>Subtotal</b>	\$0.75 M	Estimated payment to ODOT = \$11.17 M	\$11.92 M
<b>ODOT – TRAC</b>	-	\$ 11.25 M	\$ 11.25 M
<b>ODOT – District 6</b>	-	\$ 0.88 M	\$ 0.88 M
<b>MOPRC</b>	-	\$ 10.00 M	\$ 10.00 M
<b>Total</b>	\$0.75 M	\$ 33.30 M	<b>\$34.05 M</b>

### **Recommendation**

Staff recommends adoption of Resolution 54-21, authorizing the City Manager to enter into a Cooperative Construction Agreement with Union County for the US 33–SR 161–Post Road Interchange Improvements.

RECORD OF RESOLUTIONS

Resolution No. 54-21 Passed , 20

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATIVE CONSTRUCTION AGREEMENT WITH UNION COUNTY FOR THE US 33–SR 161–POST ROAD INTERCHANGE IMPROVEMENTS (17-013-CIP/ET003)

WHEREAS, the City of Dublin, Union County, and the Ohio Department of Transportation (ODOT) have identified the need to improve the US 33 – SR 161 – Post Road interchange (the “Project”); and

WHEREAS, Union County and ODOT have worked closely with Dublin to develop the project and jointly have determined funding sources from ODOT, MORPC, Union County, private development, and Dublin; and

WHEREAS, the City of Dublin is serving as the lead funding agency for the Project, and will be assembling all local partner funding; and

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

WHEREAS, Dublin and Union County recognize the benefit these public improvements will have on its citizens and it is in the best interests of Dublin and Union County to enter into a Cooperative Construction Agreement; and

WHEREAS, the total construction cost of the Project, as currently estimated, is \$34.05 million and Union County has agreed to contribute \$3.5 million and provide a developer contribution of \$1.5 million; and

WHEREAS, the City of Dublin hereby agrees to dedicate the Union County contributions to the Director of Transportation of the State of Ohio for the construction of the US 33 – SR 161 – Post Road Interchange Improvements.

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

Section 1. The City Manager is hereby authorized to enter into the Cooperative Construction Agreement with Union County for the US 33 – SR 161 – Post Road Interchange Improvements, 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. The City Manager, the Clerk of Council, the Director of Law, the Director of Finance, or other appropriate officers of the City are hereby authorized to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Resolution. The City Manager and the Director of Finance are also authorized, for and in the name of the City, to execute any amendments to the Cooperative Construction 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 , 2021.

Mayor - Presiding Officer

Attest:

Clerk of Council

**COOPERATIVE CONSTRUCTION AGREEMENT  
BETWEEN THE CITY OF DUBLIN AND UNION COUNTY FOR THE  
CONSTRUCTION OF THE POST ROAD INTERCHANGE PROJECT**

This Cooperative Construction Agreement (the "Agreement") is made and entered into this 8<sup>th</sup> day of September, 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"), and Union County, with its offices at 233 W. 6<sup>th</sup> Street, Marysville, Ohio 43040 ("Union County")(collectively "the Parties").

WHEREAS, Dublin, Union County and the Ohio Department of Transportation are working cooperatively to construct interchange improvements at US 33/SR 161/Post Road ("the Project"); and

WHEREAS, funding for the interchange improvements will come from a variety of sources and will total approximately \$34.06 million; and

WHEREAS, Union County's contribution to the Project will be \$3.5 million; and

WHEREAS, the Developer (FedEx) contribution to the Project will be \$1.5 million and Union County is in possession of these funds; and

WHEREAS, Dublin is entering into a separate agreement with the Ohio Department of Transportation for the Project; and

WHEREAS, it is necessary for Dublin to enter into an agreement with Union County for Union County's contribution to the Project and Dublin will then be responsible for making payment to the Ohio Department of Transportation for all local (Dublin, Union County and Developer) funding; and

WHEREAS, Dublin and Union County desire to enter into an Agreement and cooperate in 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, and Union 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 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.

*“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 those improvements identified as Project Number UNI-US33-24.87, PID 80748 US 33/SR161/Post Rd Interchange Project.

*“Notice Address”* means:

(a) As to Dublin:

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

(b) As to Union County:

Union County Engineer  
233 W. 6<sup>th</sup> Street  
Marysville, Ohio 43040

*“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 or Union 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 obtain all necessary right-of-way for the Project.
- (2) To provide final design engineering and manage the design and construction plans development for the Project.
- (3) To enter into all agreements with the Ohio Department of Transportation.
- (4) To make timely payment to the Ohio Department of Transportation for all local funding, which is comprised of all funding from Dublin, Union County and FedEx.

(b) Union County covenants and agrees:

- (1) To make a cash contribution of \$3.5 million.
- (2) To provide Dublin with the cash contribution paid by FedEx in the amount of \$1.5 million.

### Section 2.2 Payment

Union County shall make payment to Dublin of the contributions noted in 2.1(b) according to the following schedule:



- (1) Provide Dublin with two cash contributions totaling \$5 million within twenty (20) days of Dublin's request. Such payment shall be due no sooner than January 15, 2022.
  - a. \$3.5 million cash contribution
  - b. \$1.5 million FedEx cash contribution

### 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.

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 Union County and the breach shall have been waived thereafter by Dublin 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 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 or Union County in an individual capacity, and to the extent authorized and permitted by applicable law, no official executing or approving Dublin 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 4.3 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 4.4 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 4.5 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 4.6 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 4.7 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 4.8 Survival of Representations and Warranties. All representations and warranties of Dublin and Union County in this Agreement shall survive the execution and delivery of this Agreement.

Section 4.9 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 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.

IN WITNESS WHEREOF, Dublin 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:

\_\_\_\_\_  
Jennifer D. Readler  
Dublin Law Director

**UNION COUNTY**

**By Board of County Commissioners**

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

  
Christiane Schmenk

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

  
Dave Burke

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

  
Steve Robinson

**UNION COUNTY ENGINEER**

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

  
Jeff Stauch

Approved as to form

Digitally signed by Thayne D. Gray  
DN: cn=Thayne D. Gray, o=Union County Prosecutor's Office, ou=Assistant Prosecuting  
Attorney, email=tgray@co.union.oh.us, c=US  
Date: 2021.09.03 12:00:56 -04'00'

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Thayne D. Gray September 3, 2021  
Assistant Prosecuting Attorney

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